

No. 12618

United States
Court of Appeals
for the Ninth Circuit.

MOLLY A. HARKNESS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

FILED

OCT 24 1950

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner :

PHILIP S. EHRLICH, ESQ.,
ALBERT A. AXELROD, ESQ.,
LeROY H. GUNTHER, ESQ.,
E. J. HECHT, ESQ.

For Respondent :

T. M. MATHER, ESQ.,
R. C. WHITLEY, ESQ.

The Tax Court of the United States

MOLLY A. HARKNESS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Office of Internal Revenue Agent in Charge, San Francisco Division, IRS:90-D-DMR) dated August 21, 1947, and as a basis of her proceeding, alleges as follows:

1. The petitioner is an individual with her residence at 3767 Huntington Boulevard, in the City of Fresno, State of California. The return for the period here involved was filed with the Collector for the First District of California.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit "A") was mailed to the Petitioner on August 21, 1947.

3. The taxes in controversy are income and victory taxes for the calendar year 1943, in the amount of \$64,781.64.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The refusal of the respondent to recognize

that the petitioner and her husband, Floyd J. Harkness, and their children, Floyd James Harkness, Jr. and Harriet Harkness Colgate, were copartners transacting business under the firm name and style of United Packing Co.;

(b) The determination by the respondent that the said Floyd James Harkness, Jr. and Harriet Harkness Colgate contributed no capital to said partnership known as United Packing Co., originating with themselves;

(c) The determination by the respondent that the said Floyd James Harkness, Jr. and Harriet Harkness Colgate rendered no services to the business of the partnership known as United Packing Co.;

(d) The determination by the respondent that the said Floyd James Harkness, Jr. and Harriet Harkness Colgate did not acquire valid partnership interests in the said United Packing Co.;

(e) The re-allocation of the profits of the said partnership known as United Packing Co. by the respondent to the petitioner and her husband, Floyd J. Harkness, on a community property basis, thus increasing petitioner's taxable income by \$71,770.50.

5. The facts upon which petitioner relies as a basis of this proceeding are as follows:

(a) On December 31, 1942, petitioner, Floyd J. Harkness, Floyd James Harkness, Jr. and Harriet Harkness Colgate entered into written Articles of Copartnership, under and by virtue of the terms of which they agreed, among other things, to become copartners in the business of growing, packing, ship-

ping and distributing fresh fruits and vegetables in the State of California under the firm name and style of United Packing Co., commencing January 1, 1943, and continuing until the partners should dissolve the partnership or until the partnership should be dissolved as provided in said partnership agreement. A copy of said Articles of Copartnership is attached hereto and marked Exhibit "B" and made a part hereof.

(b) Petitioner and Floyd J. Harkness are husband and wife, and Floyd James Harkness, Jr. and Harriet Harkness Colgate are their children.

(c) The partnership capital consisted of cash and real and personal property having a value of \$138,241.61, which capital was contributed by the partners in equal amounts. The interests of the husband and wife were community property and it retained that character. There has been no attempt on the part of the husband and wife to convert the wife's or the husband's interests into separate property. The children borrowed the funds for their capital contributions from their father and gave him their respective promissory notes for such borrowed funds, which notes have been paid by the children in full with interest.

(d) The present partnership was the successor to several previous partnerships, the first of which was started in 1923, under the same name, to-wit, United Packing Co. The succeeding partnerships have engaged in similar businesses uninterrupted since the organization of the first partnership. The petitioner's husband was a partner in each of the re-

spective partnerships, and in which partnerships persons other than members of the petitioner's family were members.

(e) At the time the said partnership agreement, (Exhibit "B" attached hereto) was entered into, Harriet Harkness Colgate was married to William H. Colgate, Jr. He and Floyd James Harkness, Jr. were both in the armed forces of the United States. Floyd James Harkness, Jr. entered the United States armed forces on January 12, 1942, and was discharged therefrom on January 6, 1946. William H. Colgate, Jr. entered the United States armed forces in 1941, and was discharged therefrom in September, 1944.

Under the terms of the partnership agreement and subsequent agreement between the parties, it was contemplated and agreed that Floyd James Harkness, Jr. and William H. Colgate, Jr., the husband of Harriet Harkness Colgate, would actively engage in the business of the partnership as soon as they were able to do so. Both of them had been trained for this purpose. William H. Colgate, Jr. was to represent his wife in the partnership, the wife's interest in the partnership as well as the profits arising from the interest being community property under the community property laws of the State of California, and accordingly the said William H. Colgate, Jr. had a vested interest in both the profits and capital of the partnership.

At the time the Articles of Copartnership were entered into, it was agreed and realized that a major portion of the work of the partnership would have to

be performed by the petitioner's husband, Floyd J. Harkness, until Floyd James Harkness, Jr. and William H. Colgate, Jr. were discharged from the armed forces and were able to actively take an interest in the partnership, and by reason of such fact there was a provision inserted in the Articles of Copartnership (Exhibit "B" attached hereto) to the effect that petitioner's husband was to be the general manager of the partnership and was to devote such portion of his time towards the business of the partnership as he should deem necessary and proper for the business of the partnership; that he was to receive for his services a certain percentage of the net profits of the business to be agreed upon between the partners from time to time, and that the remaining income of the partnership should be divided equally between all the partners; that on January 4, 1943, a supplemental agreement was entered into between the partners, fixing this compensation as 75% of the net income from the said partnership, United Packing Co., up to the amount of \$100,000 which agreement stated that this compensation was being paid to him by reason of the fact that due to war conditions he was the only active copartner in the business of the partnership at that particular time. A copy of said agreement is attached hereto marked Exhibit "C" and made a part hereof.

(f) One of the principal assets of the partnership was an undivided interest in a 300-acre vineyard and orchard which was acquired on February 8, 1943. The title to said vineyard and orchard was vested as follows:

1/8 undivided interest in Floyd J. Harkness, Sr., petitioner's husband;

1/8 undivided interest in Molly A. Harkness, taxpayer;

1/8 undivided interest in Floyd James Harkness, Jr. and his wife;

1/8 undivided interest in Harriet Harkness Colgate and William H. Colgate, Jr., her husband.

The other 1/2 interest in said property was owned by Chris A. Sorensen (a former partner of United Packing Co.) and his wife.

One-half of the profits from the operation of the vineyard and orchard inured to the benefit of the partnership and was reported as such in the partnership income tax return. This one-half of the profits for the year 1943 amounted to the sum of \$60,309.92, all of which profits were re-allocated by the respondent to petitioner and her husband, Floyd J. Harkness, instead of having been apportioned among the owners of said property on a partnership basis as reported in the income tax returns of the partnership and the respective income tax returns of the partners.

(g) In September, 1944, said William H. Colgate, Jr. received a medical discharge from the United States Army, and he thereafter immediately entered the services of the United Packing Co., and has devoted his entire time and attention since said date to the business and interests of the said United Packing Co.

(h) On January 6, 1946, Floyd James Harkness, Jr. was discharged from the United States Army,

and he thereafter immediately entered the services of the United Packing Co., and has devoted his entire time and attention since said date to the business and interests of the said United Packing Co.

Wherefore, petitioner prays that this Court may hear this proceeding and determine that the respondent erred in re-allocating the income of the partnership known as United Packing Co., and in such re-allocating to the petitioner and the petitioner's husband, Floyd J. Harkness, on a community property basis the entire income from said partnership, thus increasing the taxable income of the petitioner by the sum of \$71,770.50, and that this Court should determine that the correct amount of the petitioner's income tax and victory tax liability for the said year be re-computed in accordance with Rule 50.

/s/ PHILIP S. EHRLICH,

/s/ ALBERT A. AXELROD,

/s/ LeROY H. GUNTHER,

Counsel for Petitioner.

State of California,
County of Fresno—ss.

Molly A. Harkness, being first duly sworn, deposes and says:

That she is the petitioner above named; that she has read the foregoing Petition and is familiar with the statements contained therein, and that the statements contained therein are true except those stated

to be upon information and belief, and that those she believes to be true.

/s/ MOLLY A. HARKNESS.

Subscribed and sworn to before me this 29th day of October, 1947.

[Seal] /s/ HARRY R. BRADLEY,
Notary Public in and for the County of Fresno,
State of California.

Exhibit "A"

Treasury Department
Internal Revenue Service
74 New Montgomery Street
San Francisco 5, California

Aug. 21, 1947

Office of
Internal Revenue Agent in Charge
San Francisco Division
IRA:90-D-DMA
Mrs. Molly A. Harkness
3767 Huntington Boulevard
Fresno, California

Dear Mrs. Harkness:

You are advised that the determination of your income and victory tax liability for the taxable year ended December 31, 1943, discloses a deficiency of \$64,781.64, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

/s/ GEO. J. SCHOENEMAN,
Commissioner,

By /s/ F. M. HARLESS,
Internal Revenue Agent in
Charge.

Enclosures:

Statement

Form of waiver

DMR 8-21-47

Statement

San Francisco

IRA:90-D-DMR

In re: Mrs. Molly A. Harkness
3767 Huntington Boulevard
Fresno, California

Tax Liability for the Taxable Year Ended
December 31, 1943

Deficiency

Income and Victory Tax.....\$64,781.64

In making this determination of your income and victory tax liability, careful consideration has been given to your protest dated December 23, 1946, and to the statements made at the conference held on April 21, 1947.

A copy of this letter and statement has been mailed to your representative, Mr. Philip S. Ehrlich, 2002 Russ Building, San Francisco 4, California, in accordance with the authority contained in the power of attorney executed by you and on file with this office.

Statement for Year 1942

No change is made in income as reported on your return.

Tentative income tax liability reported...\$37,095.33

Molly A. Harkness vs.

Adjustments to Net Income

Year: 1943

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return	\$108,821.85	\$114,858.88
Unallowable deductions and additional income:		
(a) Partnership income	\$71,770.50	\$71,770.50
(b) Contributions	25.00	0.00
	<u>71,795.50</u>	<u>71,770.50</u>
Total	\$180,617.35	\$186,629.38
Nontaxable income and additional deductions:		
(c) Interest	\$ 144.20	\$ 0.00
(d) Taxes	227.80	
(e) Business expenses	108.45	108.45
	<u>480.45</u>	<u>108.45</u>
Net income as adjusted	<u>\$180,136.90</u>	<u>\$186,520.93</u>

Explanation of Adjustments

(a) On December 31, 1942, you and your husband, Floyd J. Harkness, together with your two children, Floyd James Harkness, Jr., and Harriet Harkness Colgate, executed an instrument purporting to create a family partnership. Since Floyd James Harkness, Jr., and Harriet Harkness Colgate contributed no capital originating with themselves, rendered no services to the business, and were not required to participate in the control and management of the business under the terms of the alleged partnership agreement, it is held that they did not acquire valid partnership interests in the United Packing Company. Accordingly, profits from the above-named organization are reallocated to you and your husband on a community property basis, thus increasing your taxable income by \$71,770.50 as shown below.

Total net profit of United Packing Company	\$361,832.00
Your community one-half share	180,916.00
Amount reported on return	<u>109,145.50</u>
Adjustment—increase	\$ 71,770.50

(b) Deduction for contributions is decreased by
\$25.00 as follows:

Total charitable contributions	\$ 550.00
Your one-half community share	275.00
Amount claimed on your return	<u>300.00</u>

Adjustment—decrease	<u>\$ 25.00</u>
---------------------------	-----------------

Explanation of Adjustments
(Continued)

(c) (d) and (e) Deductions of \$144.20, \$227.80 and \$108.45 are allowed for interest, real estate taxes and business expenses, respectively, as shown below since the items represent community deductions, one-half of which are deductible by you.

	Interest	Real Estate Taxes	Business Expenses
Total amounts paid	\$288.41	\$455.60	\$216.90
Your community one-half share	\$144.20	\$227.80	\$108.45

Computation of Tax
Year: 1943

Income tax net income	\$180,136.90
Less: Personal exemption	1,100.00
Surtax net income	\$179,036.90
Less: Earned income credit	1,400.00
Balance subject to normal tax	\$177,636.90
Normal tax at 6 per cent on \$177,636.90.....	\$ 10,658.21
Surtax on \$179,036.90.....	122,159.89
Total income tax	\$132,818.10
Victory tax net income	\$186,520.93
Less: Specific exemption	624.00
Income subject to victory tax	\$185,896.93
Victory tax before credit (5 per cent of \$185,896.93)	\$ 9,294.85
Less: Victory tax credit	500.00
Net victory tax	8,794.85
Income and victory tax for 1943	\$141,612.95
Income tax for 1942	\$ 37,095.33
Amount of 1942 or 1943 tax, whichever is larger	\$141,612.95
Forgiveness feature:	
Amount of 1942 or 1943 tax, whichever is smaller	\$37,095.33
Amount forgiven (¾ of \$37,095.33)	27,821.50
Amount unforgiven	9,273.83
Correct income and victory tax liability	\$150,886.78

Computation of Tax
(Continued)

Correct income and victory tax liability (Brought forward)	\$150,886.78
Income and victory tax disclosed by return; page 4—line 20 (Original, Account No. 359238 First California District)	86,105.14
Deficiency of income and victory tax	<u>\$ 64,781.64</u>

Exhibit “B”

Articles of Co-Partnership

These Articles of Co-Partnership, made and entered into this 31st day of December, 1942, by and between Floyd J. Harkness, first party, Molly A. Harkness, second party, Floyd James Harkness, Jr., third party, and Harriet Harkness Colgate, fourth party, the first, second and third parties being residents of the County of Fresno, State of California, and fourth party being a resident of Columbus, Franklin County, Ohio:

Witnesseth:

That the said parties hereto for themselves, their heirs, executors, administrators and assigns agree to become co-partners in the business of carrying on a general business of growing, packing, shipping and distributing of fresh fruit and vegetables in the State of California, including the purchasing and selling of any and all kinds of real and personal property necessary in carrying on and conducting said business, and said business shall be conducted under the firm name and style of “United Packing Co.” from January 1st, 1943, until such time as the said co-

partners shall mutually agree to dissolve said co-partnership, or the said co-partnership shall be otherwise as hereinafter provided dissolved, and that the terms upon which the said parties have entered into said co-partnership are hereinafter stated as follows, to-wit;

That the said business of growing, packing, shipping and distributing of fresh fruit and vegetables and any other business which shall be incidental and necessary thereto, shall be carried on in the State of California, and that the principal place of business of said co-partnership shall be in the Rowell Building in the City of Fresno, County of Fresno, State of California or at any other place or places as the partners shall hereafter determine and that the firm name and style of said co-partnership business shall be United Packing Co., with real and personal property belonging thereto located in the Counties of Kern, Tulare, San Joaquin and Fresno, State of California.

It is understood and agreed by and between the parties hereto that said first party has been conducting the above mentioned business individually under the firm name and style of United Packing Co., and that he and Molly A. Harkness, his wife, second party herein, have been the owners of all the real and personal property, equipment and materials that are now used in carrying on said business, together with such moneys as may now be on deposit in the name of the said United Packing Co. and together with any and all outstanding accounts owing as of this date, the said Floyd J. Harkness and Molly A.

Harkness, first and second parties herein, do by these presents, sell, convey and set over, an undivided one-fourth partnership interest in and to all of the partnership property of the United Packing Co. to each of the third and fourth parties, namely, Floyd James Harkness, Jr. and Harriet Harkness Colgate, and from this date on each of the said co-partners above named, shall be and become the owners of an undivided one-fourth interest of all of the property of the said co-partnership doing business under the firm name and style of United Packing Co., and that the real and personal property which shall compose the capital of the said co-partnership and belong to the newly organized co-partnership is described in a Schedule marked Exhibit "A" and attached hereto and made a part of this agreement as if herein fully set out, and that there shall also belong to said co-partnership any and all other assets which now belong to said co-partnership and are not herein described as well as any and all other assets which may hereafter belong to said co-partnership; that all thereof shall belong equally to all of the partners herein named and in consideration of said first party conveying all of said real and personal property to said co-partners being conducted under the firm name and style of the United Packing Co., and which is agreed to be of the net value of \$138,241.61, that the said third and fourth party shall each execute in favor of first party a promissory note in the sum of \$34,560.40, payable in the manner as therein set forth to first party, and which sum shall be the purchase price for their undivided one-fourth interest in and to all of the assets of said co-partnership.

It is understood and agreed by and between the parties hereto that the said first and second parties are husband and wife and that all of the property which said first party is on this date conveying to the newly formed co-partnership, in which all of the above named parties are equal partners, has been accumulated by first and second parties during their married life and is the community property of first and second parties and that one-half thereof, by reason thereof, is the property of said second party and that the said second party does herewith join first party in the conveying of all of the said assets herein described to the said co-partnership so that from this date on, all of the said property now belonging to the said United Packing Co. and any and all other property which may hereafter belong to said co-partnership shall be owned equally by all the said co-partners.

It is understood and agreed by and between the said co-partners that said first party shall be, and is from this date on made the general manager of said co-partnership, and that he shall be in full charge of all business operations of said co-partnership and that he shall have the full right to conduct the business of said co-partnership in such manner as he may desire, including the selling of any and all of the partnership assets and the purchasing of such other property as he may desire in the name of said co-partnership together with the right to borrow such money as he may deem necessary to carry on said business and in consideration thereof it is understood and agreed that first party is to receive for his said

services a certain percentage of the net profit of said business to be agreed upon between all of the partners herein from time to time as they may agree upon between themselves, and that the balance of the net income of said co-partnership shall be equally divided between all of the co-partners herein at such time or times as they may agree upon, provided however that any profits which third and fourth parties are entitled to receive shall be paid to first party and applied by him first, to any payment which first party may have advanced to third and fourth parties, together with interest thereon and the balance thereof, if any, shall be applied by first party in the payment of the promissory notes which the said third and fourth parties have executed in favor of first party for the purchase price of their share in said co-partnership business.

It is understood and agreed that the said first party as general manager, and anyone of the other co-partners acting together shall have the right to bind the said co-partnership in such manner or form as they may deem necessary, in order to carry on the business of the said co-partnership, and that no other co-partner shall have the right to in any manner bind the said co-partnership, and that no co-partner shall have the right to in any way sell, assign, set over, transfer or hypothecate his undivided one-fourth interest in said co-partnership without first obtaining the written consent of two other co-partners.

It is understood and agreed that said first party as general manager of said co-partnership shall devote such portion of his time and attention to the

conducting and carrying on of said business, as he shall deem necessary and proper but that he will at all times use his own good judgment and best efforts and experience in carrying on said business for the best interests of all parties concerned and that second, third and fourth parties shall not devote any time or attention in carrying on said business unless hereafter agreed upon by and between any three of said co-partners and at that time it shall be agreed upon by and between any three of said partners as to what the compensation shall be for the services which third or fourth partner may contribute towards the carrying on of said co-partnership business.

It is understood and agreed that there shall be kept at all times a complete set of books of account wherein there shall be entered any and all records and transactions of said business and that the said first party shall have complete charge thereof and that said books shall be under his immediate supervision and that the said first party shall have the full charge of the collections and expenditures of all of the moneys received and taken in, in the carrying on of said business, and that all of the business transactions of said first party in carrying on said business shall be binding on all of the said co-partners.

It is understood and agreed in this connection that first party will render on the 1st of each year a true and full statement and account of the profits or losses of said business and all other matters and transactions done and performed in connection with said business.

It is understood and agreed by and between the parties hereto that upon the consent of the managing partner and two of the remaining partners that the capital of the partnership may be increased to such sum as may be determined by them, and that thereafter each of the partners shall contribute their respective share of the capital increase. In the event the managing partner and two of the other partners desire to reduce the capital of the partnership or withdraw profits, then such determination shall become binding upon all the partners hereto.

It is further understood and agreed by and between the parties hereto that each one of the partners will not, without the previous consent in writing of the other partners, enter into any bond or become bail or security for any person or persons or do or suffer to be done anything whereby the capital or property of the co-partnership may be taken by execution and that each partner shall punctually pay his own separate debts and should anyone of the said co-partners become financially involved in outside interests so that his share in the said co-partnership business shall become involved, and should anyone of said co-partners in any manner so become involved then the other co-partners shall have the right to acquire such insolvent partner's right, title and interest in said co-partnership at the book value thereof without any consideration of the good will of the said co-partnership and upon such transfer, such insolvent partner shall have no further right, title and interest in and to the capital assets of the said co-partnership.

It is understood and agreed that in the event that anyone of the said co-partners desire to sell or in any way dispose of their interest in the said co-partnership business, that then the remaining co-partners shall have the right to purchase such partner's interest in said co-partnership and then the selling co-partner shall convey all of his right, title and interest in and to the said co-partnership property to the remaining co-partners, and shall receive for such conveyed interest the book value of such interest at said time without any consideration of the goodwill of the co-partnership and that the amount which the selling co-partner shall receive may be paid in cash by the remaining co-partners, but if the remaining co-partners do not desire to pay cash for the selling partner's interest, then they shall have the right to pay such amount by the application of the profits from the business of such selling partner's share and that the same shall continue to be paid in this manner until the said purchase price of such selling partner's interest in said co-partnership shall have been paid in full, and then such selling partner shall execute in favor of the remaining co-partners a Bill of Sale conveying all of his right, title and interest in and to the said co-partnership business and assets to the remaining co-partners.

It is understood and agreed by and between the parties hereto that should anyone of the partners become deceased, that then the remaining co-partners shall have the right to purchase such deceased partner's share in said business at the book value at the time of the death of such co-partner without any consideration of the good will of the partnership and

such deceased partner's interest in said business shall be paid to the legal representative of such deceased partner and then the legal representative of such deceased partner's estate shall convey all of the deceased partner's right, title and interest in and to the said co-partnership property to the remaining co-partners and the legal representative of such deceased partner shall receive for such conveyed interest the purchase price for such deceased partner's interest which may be paid in cash by the remaining co-partners or if the remaining partners do not desire to pay cash for such deceased partner's interest, then they shall have the right to pay such amount by the application of the profits from the business of such deceased partner's interest and that this method of payment shall continue until the said purchase price of said deceased partner's interest shall have been paid in full and that upon such payment in full of the purchase price of said deceased partner's interest in said co-partnership the legal representative of such deceased partner shall execute and deliver to the remaining co-partners a Bill of Sale conveying all of the said deceased partner's interest in the said co-partnership business and assets.

It is also agreed by the co-partners that in the event of any misunderstanding between the co-partners concerning the matter of conducting and carrying on of said business that then the partners shall, between themselves adjust the same; it is however understood in this connection that the decision of the general manager and one other partner hereto shall determine any question which may arise be-

tween them and in the event that anyone or more of said co-partners should be dissatisfied with such decision then they shall have the right as given them by the laws of the State of California to bring proceedings in court for the purpose of either dissolving the said co-partnership or obtaining such relief as they are entitled under the terms of this co-partnership.

It is further understood and agreed that this co-partnership business is entered into on the proposition that each partner has an equal interest therein and is entitled to an equal share in all gains, profits and increases which shall come, grow or arise from, or by means of said business so long as such partner or partners shall not be in default in any of the terms of this agreement and that each partner shall be entitled to his one-fourth share of the said profits and that each partner shall likewise share equally in any losses which the said partnership may sustain and that each partner shall in the event it becomes necessary to furnish additional funds by reason of any losses which the said partnership may sustain, then each partner shall furnish and pay into the said business his equal share which may be necessary in order to continue on with the said co-partnership business. It being agreed that the decision of the managing partner and any two of the remaining partners shall be final as to the matter of the division of the profits and the amount which may be paid in by each partner in the event it becomes necessary to do so on account of losses sustained by the said co-partnership.

That at the end or sooner determination of their co-partnership, the said co-partners, each to the

other, shall and will make a true, just and final accounting of all things relating to their said business, and in all things truly adjust the same; and that all and every stock and stocks, as well as the gains and increase thereof, which shall appear to be remaining, either in money, goods, wares, fixtures, debts or otherwise, shall be divided between them, share and share alike.

In Witness Whereof, the above named partners have hereunto set their hands and signatures the day and year first above written.

.....

First Party.

.....

Second Party.

.....

Third Party.

.....

Fourth Party.

Financial Statement—United Packing Co.

1/1/43

Assets

Cash		\$100,000.00
Lodi Jap Camps		428.77
Packing Sheds	\$21,615.15	
Less: Depr. Reserve	15,966.41	5,648.74
Real Estate—Parlier		1,500.00
Registered Brands		1,230.00
Auto Equipment	9,025.96	
“ “	2,925.58	6,100.38
Firebaugh Ranch	2,944.50	
“ “	1,898.24	1,046.28
Otani Tractor	1,290.56	
“ “	151.15	1,139.41
Box Making Machine	750.00	
“ “	750.00	0
Peach Brushers	2,271.11	
“ “	2,271.11	0
Paper Trays		504.18
Office Equipment	2,354.03	
“ “	1,293.03	1,061.00
Packing Equipment	12,288.81	
“ “	8,976.86	3,311.95
Picking Boxes		6,182.60
Packing Materials		6,473.31
Accounts Receivable:		
Andrews Bros.	164.50	
Benner Tea Co.	2,365.00	
H. H. Bennett	222.30	
Mrs. Blazer	575.00	
P. V. Cervantes	40.00	
P. B. Elter	74.45	
Goodman Vyd.	325.00	
M. Kozuki	519.03	
Mrs. Okjima	811.97	
Pete Dawson	2,430.00	
Ray Stevens	262.78	
Mrs. W. J. Welsh	444.40	
		8,234.43
		<u>\$142,861.03</u>

/s/ FLOYD JAMES HARKNESS,
JR.,
Third Party.

/s/ HARRIET HARKNESS
COLGATE,
Fourth Party.

Filed T. C. U. S., November 10, 1947.

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4 and 4(a) to (e), inclusive. Denies that the Commissioner erred in the determination of the deficiency as alleged in paragraph 4 of the petition and subparagraphs (a) to (e), inclusive, thereunder.

5(a). Denies the allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b). Admits the allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) and (d). Denies the allegations contained in

subparagraphs (c) and (d) of paragraph 5 of the petition.

5(e). For lack of knowledge or information sufficient to form a belief, denies the allegations contained in subparagraph (e) of paragraph 5 of the petition.

(f), (g) and (h). For lack of knowledge or information sufficient to form a belief, denies the allegations contained in subparagraphs (f), (g) and (h) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel;

T. M. MATHER,
Special Attorney, Bureau
Of Internal Revenue.

Received and Filed, T. C. U. S., December 16,
1947.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties through their respective counsel that the following facts are admitted without prejudice to the rights of either party to enter other and further testimony:

1. The petitioners are husband and wife who have maintained their family domicile in California for many years prior to 1943. Prior to December 31, 1942, the business and property of the United Packing Co. was owned and operated by Floyd J. Harkness and Molly A. Harkness. Molly A. Harkness by virtue of her marital rights has a 50% community property interest in the assets of the business. She has never performed any substantial services in connection with said business.

2. Floyd J. Harkness, Jr., and Harriet Harkness Colgate are the children of Floyd J. and Molly A. Harkness. The son attended various schools until June, 1941, when he graduated from college, majoring in commerce. Prior to that time he had worked through vacations in the business of his father and mother involving the growing, packing and distributing of fresh fruit and vegetables in the State of California. From June, 1941, until January, 1942, the son devoted his full services as an employee in the said business of United Packing Co., operating various district deals.

On January 12, 1942, he entered the United

States Army, from which he was not discharged until January 6, 1946. On December 31, 1942, he was twenty-five years old.

3. Harriet Harkness Colgate remained at school until June, 1942. Previous to that time she had performed occasional services of a clerical nature in said business during school vacations. In August, 1942, she was married to William H. Colgate, Jr., who was at that time serving in the United States Armed Forces, where he remained until 1944, at which time he received a medical discharge. Previous to his marriage to Harriet Harkness he had no connection of any kind with the United Packing Co.

During the year 1943 no services for the United Packing Co. were performed by Harriet Harkness Colgate nor by her husband. Nor did Harriet Harkness Colgate perform any services after 1943, although after his army discharge in September, 1944, William H. Colgate, Jr., devoted his full time and services to date to the business.

4. On December 31, 1942, an agreement entitled "Articles of Partnership" was executed by Floyd J. Harkness, Molly A. Harkness, Floyd J. Harkness, Jr., and Harriet Harkness Colgate, a true and correct copy of which is attached to the petitions in these proceedings and marked Exhibit "B."

A financial statement of United Packing Co. at January 1, 1943, showing the assets and liabilities of United Packing Co. as of January 1, 1943, is attached to Exhibit "B" in said proceedings as

Exhibit "A" thereof. The net worth or capital of said United Packing Co. on January 1, 1943, was \$138,241.61, and was the community property of Floyd J. and Molly A. Harkness at the time of the execution of said agreement marked Exhibit "B" attached to the petition filed in these proceedings. The assets of United Packing Co. did not constitute all of the assets of Floyd J. Harkness and his wife, there being two ranches which were excellent producers. These interests were individually retained by Floyd J. Harkness and his wife, Molly A. Harkness.

5. As provided in the agreement of December 31, 1942 (Exhibit "B" filed in these proceedings), Floyd J. Harkness, Jr., and Harriet Harkness Colgate each executed notes payable to their father, Floyd J. Harkness, Sr., which note in the case of Harriet Harkness Colgate was also executed and signed by William H. Colgate, Jr., the same being executed pursuant to the terms of said agreement. The notes were payable as provided in said partnership agreement. The note of Harriet Harkness Colgate and William H. Colgate, Jr., was for \$34,560.40. The note of Floyd J. Harkness, Jr., was for \$33,168.35. The sum of \$1,392.05, the difference between the two notes, is due to the credit standing on the books of United Packing Co. in favor of Floyd J. Harkness, Jr., consisting of the balance of bonuses and salaries to which he was entitled for work previously performed for United Packing Co. A statement from the books of United Packing Co.

showing the payment of the notes is hereto attached as Exhibit 1-A.

6. Under date of January 4, 1943, a supplement to the agreement of December 31, 1942, was executed, a copy of which is attached to the petition in these proceedings and marked Exhibit "C" therein.

7. On January 16, 1945, a supplemental agreement was entered into by and between Floyd J. Harkness, as first party, Molly A. Harkness, as second party, Floyd James Harkness, Jr., as third party, Harriet Harkness Colgate, as fourth party, and William H. Colgate, Jr., as fifth party, a copy of which agreement is hereto attached marked Exhibit 2-B and made a part hereof.

8. The volume of business handled by United Packig Co. and its predecessors in interest for the years 1937 to 1947, inclusive, in tonnage and dollar amount was as follows:

Year	Fruit Tonnage Shipped	Gross Proceeds
1937.....	9,435	\$ 415,016.70
1938.....	11,118	429,385.19
1939.....	15,266	547,176.48
1940.....	15,878	654,929.86
1941.....	15,453	808,627.12
1942.....	16,643	1,468,119.64
1943.....	15,113	2,572,905.53
1944.....	19,295	2,689,642.17
1945.....	16,575	2,365,742.51
1946.....	17,595	2,701,119.28
1947.....	24,718	2,578,967.40

The net income of the business of United Packing Co. and its predecessors in interest for the years 1937 to 1947, inclusive, was as follows:

1937.....	\$ 7,327.78
1938.....	15,551.51
1939.....	20,734.58
1940.....	29,470.38
1941.....	22,499.94
1942.....	141,790.95
1943.....	361,582.00
1944.....	321,765.79
1945.....	286,652.94
1946.....	234,939.00
1947.....	250,468.98

9. Compensation allocated to Floyd J. Harkness, Floyd J. Harkness, Jr., and William H. Colgate for the years 1943 to 1947, inclusive, was as follows:

	1943	1944	1945	1946	1947
F. J. Harkness....	\$75,000.00	\$75,000.00	\$75,000.00	\$75,000.00	\$75,000.00
Floyd J. Harkness, Jr...	.....	.....	.....	57,984.75	53,635.13
Wm. H. Colgate	.....	450.00	5,375.00	46,554.79	35,928.45

No compensation was paid to Molly A. Harkness or Harriet Harkness Colgate during said years.

10. Net profits, other than the salaries shown above, which were allocated to Floyd J. Harkness, Molly A. Harkness, Floyd J. Harkness, Jr., Harriet Harkness Colgate and William H. Colgate, Jr., on the books of United Packing Co. for the years 1943 to 1947, inclusive, was as follows:

	1943	1944	1945	1946	1947
F. J. Harkness....	\$71,645.50	\$61,578.94	\$51,569.48	\$13,849.86	\$21,476.35
Molly A. Harkness	71,645.50	61,578.95	51,569.48	13,849.86	21,476.35
Floyd J. Harkness, Jr...	71,645.50	61,578.95	51,569.48	13,849.87	21,476.35
Harriet Harkness Colgate	35,822.75	30,789.47	25,784.74	6,924.93	10,738.17
Wm. H. Colgate	35,822.75	30,789.47	25,784.75	6,924.93	10,738.18

11. On February 8, 1943, a 50% interest in a 300-acre vineyard and orchard was acquired by Floyd J. Harkness, Molly A. Harkness, Floyd J. Harkness, Jr., Harriet Harkness Colgate and William H. Colgate. The remaining 50% interest was acquired by Chris A. Sorensen, who was an employee of United Packing Co. All funds for the purchase of the vineyard were supplied by United Packing Co. and the amount loaned to Chris A. Sorensen was repaid to United Packing Co. by him. The 50% interest so acquired by Floyd J. Harkness, Molly A. Harkness, Floyd J. Harkness, Jr., Harriet Harkness Colgate and William H. Colgate was included as an asset of United Packing Co. and subsequent income therefrom was included in its net income. A copy of the deed and bill of sale showing said acquisition is hereto attached marked Exhibit 7-G.

12. In 1945, Sorensen discontinued his connection with United Packing Co. and sold his one-half interest in the 300-acre ranch to Floyd J. Harkness, Molly A. Harkness, Floyd J. Harkness, Jr., Harriet Harkness Colgate, William H. Colgate, Earl D. Harkness and Gladys M. Harkness, a copy of which agreement is hereto attached, marked Exhibit 3-C. An analysis of Chris A. Sorensen's income from the ranch above mentioned, as shown on the books of United Packing Co. is attached hereto marked Exhibit 4-D.

13. There is attached hereto marked Exhibit 5-E a Schedule which shows the participation over a period of time of persons employed by United

Packing Co. and its predecessors in interest in a managerial capacity from 1937 to 1947, inclusive, other than said partners of United Packing Co.

14. The capital accounts of Floyd J. Harkness, Molly A. Harkness, Floyd J. Harkness, Jr., Harriet Harkness Colgate and William H. Colgate, Jr., as shown by the books of United Packing Co. for the years 1943 to 1947, inclusive, attached hereto marked Exhibit 6-F.

15. Under date of January 11, 1946, a supplement to the agreement of December 31, 1942, was executed, a copy of which is hereto attached marked Exhibit 8-H.

16. Under date of January 24, 1947, a supplement to the agreement of December 31, 1942, was executed, a copy of which is hereto attached marked Exhibit 9-I.

Dated: January 7th, 1949.

/s/ PHILIP S. EHRLICH,

/s/ ALBERT A. AXELROD,

/s/ LeROY H. GUNTHER,

Counsel for Petitioner.

/s/ CHARLES OLIPHANT,

Chief Counsel,

Bureau of Internal Revenue, Counsel for Respondent.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

T. M. MATHER,
Special Attorney, Bureau
Of Internal Revenue.

Exhibit 1-A

United Packing Co.

1/ 2/43	Note Principal	\$34,560.40
	4% Interest	1,382.42
		<hr/>
12/31/43	Repaid (Harriet H. Colgate)	\$35,942.82
	(William H. Colgate, Jr.)	
1/ 2/43	Note Principal	33,168.35
	4% Interest	1,326.73
		<hr/>
12/31/43	Repaid (F. J. Harkness, Jr.)	\$34,495.08

EXHIBIT 2-B

This Supplemental Agreement, made and entered into this 16th day of January, 1945, by and between Floyd J. Harkness, first party; Molly A. Harkness, second party; Floyd James Harkness, Jr., third party; Harriet Harkness Colgate, fourth party, and William H. Colgate, Jr., fifth party.

Witnesseth:

That Whereas, the first four parties hereinabove mentioned did on the 31st day of December, 1942, enter into Articles of Co-partnership under the firm name and style of "United Packing Co.,"

And Whereas, the said Articles of Co-partnership provided among other things that the third and fourth parties hereinabove named were each to execute in favor of first party a promissory note in the sum of \$34,560.40, payable in the manner as therein set forth to first party, and which said sum was the purchase price for their undivided one-fourth interest in and to all of the assets of said co-partnership;

And it is now understood and agreed that the said third and fourth parties herein named have paid off the said promissory notes and all obligations which they are owing to first and second parties so that they are now each the owner of an undivided one-fourth interest in all of the assets of the said co-partnership without any indebtedness being attached thereto.

It is further understood and agreed that at the time of the execution of the said original partnership agreement, to wit, December 31, 1942, fifth party, namely, William H. Colgate, Jr., was the husband of fourth party herein, namely, Harriet Harkness Colgate, and was in the service of the armed forces of the United States government; and that he has now completed said service; and it is now agreed that the said William H. Colgate, Jr., shall become a co-partner in the said co-partnership as a participant in his wife, Harriet Harkness Colgate's one-fourth share of the partnership profits; and that until such time as the said third party, Floyd James Harkness, Jr., who is now serving in the United States armed forces, shall be

discharged therefrom, and shall become an active co-partner in the said business, that the said fifth party herein shall work for said co-partnership as a field man and shall receive for such services a regular field man's salary; and that this arrangement shall continue in full force and effect until the said third party, namely, Floyd James Harkness, Jr., shall return to active participation as a co-partner.

It is further understood and agreed that the said original co-partnership agreement dated December 31, 1942, between the first four parties herein named, provides that the said first party as general manager and any one of the co-partners acting together with the said first party should have the right to bind the said co-partnership in such manner or form as they may deem necessary in order to carry out the business of said co-partnership; and that said provision is hereby amended so that it shall now become necessary that first party as general manager and any two of the other co-partners acting together with said general manager shall have the right to so bind the said co-partnership.

It is further understood and agreed that the said original co-partnership agreement entered into between the first four parties hereto on December 31, 1942, contain a provision that in the event of any misunderstanding between the co-partners concerning the matter of conducting and carrying on of said business, that the decision of the general manager and one other partner shall determine any

question which may arise between the said co-partners; and it is now agreed that the said provision shall be amended so that in the event of any misunderstanding between the co-partners concerning the matter of conducting and carrying on of said business, that the decision of the general manager and any two other partners shall determine any such question, and their decision shall be binding upon the remaining co-partners, excepting that any one or more of the co-partners who shall be dissatisfied with such decision shall still have the right as given them by the laws of the State of California to bring proceedings in court for the purpose of obtaining relief as they are entitled to under the terms of the said co-partnership; the same as was provided in said original co-partnership agreement.

It is understood and agreed by and between the parties hereto that the said original Articles of Co-partnership dated December 31, 1942, shall remain in full force and effect except as herein modified by the Supplemental Agreement entered into on the 4th day of January, 1943, by the first four parties, hereto, and except as herein modified by this Supplemental Agreement.

In Witness Whereof, the parties hereto have hereunto set their hands and signatures the day and year in this agreement first above written.

FLOYD J. HARKNESS,
First Party.

MOLLY A. HARKNESS,
Second Party.

FLOYD JAMES HARKNESS,
JR.,
Third Party.

HARRIET HARKNESS
COLGATE,
Fourth Party.

WILLIAM H. COLGATE, JR.,
Fifth Party.

EXHIBIT 3-C

This Agreement, made and entered into this 16th day of January, 1945, by and between Chris A. Sorensen and Katherine Sorensen, his wife, of the County of Fresno, State of California, parties of the first part, and Floyd J. Harkness, Molly A. Harkness, his wife; Harriet Harkness Colgate and William H. Colgate, Jr., her husband, and Floyd J. Harkness, Jr., nad Earl D. Harkness and Gladys M. Harkness, his wife, all of the same County and State, parties of the second part:

Witnesseth:

That said first parties, for and in consideration of the payments, covenants and agreements on the part of the second parties hereinafter contained, to be by second parties paid, kept and performed, do hereby agree to sell and convey unto second parties and second parties agree to buy, all those cer-

tain lots, pieces or parcels of land situate, lying and being in the County of Fresno, State of California and described as follows, to wit:

An undivided one-half interest in and to the following described real and personal property:

Parcel I:

All that portion of Section 5, Township 15 South, Range 23 East, M.D.B. & M., according to the United States Government Township Plats, described as follows:

Commencing at a point on the West line of said Section which is 316.5 feet southerly from the northwest corner of said Section 5; thence South $10^{\circ} 56'$ East 99.8 feet to the center line of Cameron Slough; thence following the center line of Cameron Slough, as follows, to wit: South $39^{\circ} 33'$ East 90 feet, South $29^{\circ} 36'$ East 300 feet; South $41^{\circ} 40'$ East 300 feet, South $63^{\circ} 19'$ East 290 feet; North $83^{\circ} 45'$ East 160 feet, South $49^{\circ} 15'$ East 200 feet; South $25^{\circ} 52'$ East 300 feet, South $16^{\circ} 43'$ East 260 feet; South $13^{\circ} 23'$ West 245 feet, South $37^{\circ} 57'$ East 500 feet; South $59^{\circ} 43'$ East 130 feet, South $15^{\circ} 28'$ East 300 feet; and South $7^{\circ} 24'$ East 490 feet to the center line of Kings River; thence South $7^{\circ} 24'$ East to the intersection with the Government Meander Line, the same being the South boundary of Lot 10 of said Section 5, according to the Government Survey; thence westerly following the said Government Meander Line to the West line of said Section 5; thence northerly along the West line of said Section 5, to the point of commencement.

Parcel II:

Commencing at the northeast corner of Section 6, Township 15 South, Range 23 East, Mount Diablo Base and Meridian, according to the United States Government Surveys, and running thence South 200 rods, to the center of Kings River; thence westerly up and along said center of said river to a point where said center of said river intersects with the center of North and South center line of said Section 6; thence North 10 chains, more or less, to the United States Segregation line North of said river; thence northwesterly along said Segregation Line to the southwest corner of Lot 2 of said Section 6; thence North 20 chains, more or less, to the northwest corner of said Lot 2; and thence East along the North line of said Section 60 chains to the place of beginning.

Also, that part of the South half of the northwest quarter of Section 6, Township 15 South, Range 23 East, M. D. B. & M. lying North of Kings River and South of the United States Segregation Line on the North side of Kings River; Excepting from the above land the following: Commencing at the northeast corner of Lot 2 (United States Government Survey and Plat), being also the one-quarter section corner on the North line of Section 6, Township 15 South, Range 23 East, Mount Diablo Base and Meridian; thence South along the half section line through said Section 6, 2251.8 feet; thence North $47^{\circ} 49'$ West, 888.00 feet; thence North $75^{\circ} 37'$ West, 691 feet; thence North $5^{\circ} 46'$ West 86.50 feet; thence East 16.00 feet to the southwest corner of

said Lot 2; thence North along the West line of said Lot 2, 1419.10 feet to the northwest corner of said Lot 2; thence South $89^{\circ} 7'$ East along the North line of said Lot 2, being also the North line of said Section 6, 1320 feet to the point of commencement.

Together with any and all Riparian Water rights of the Kings River, which now are attached and belong to the above described real property.

Together with any and all rights of way for roads running from the northwest corner of grantors' property to Malaga Avenue which have heretofore been established by usage, agreements or deeds, and also any and all rights of way for telephone lines and power lines used in connection with the above described real property.

Together with the following described personal property:

Two mules and harness

Two horses and their harness

One Ford tractor

One disc and sulphur duster

One Case tractor

Two 10HP motors and two 5 inch pumps

One Goble disc

One Case plow

One unitiller

One Tractor spring harrow

One Bean spray machine

Three vineyard trucks

One 1000 gallon Butane tank

One Chevrolet truck

One 1937 Ford truck

One 1939 Ford truck

One tractor disc

Three-fourths mile telephone line

Power line

One new tractor brush rake

Two 550 gallon gas storage tanks with two pumps

One 1500 gallon gas storage tank

Together with horse tools and other implements consisting of one mower, plows, cultivators, rake and steel-wheel truck.

together with any and all other farm tools and equipment now located and used upon the above described real property.

It being understood and agreed that it is the intention of the said first parties to sell all of their right, title and interest in and to all of the personal property which the parties hereto obtained under a Bill of Sale from Shoichi Haranga dated January 16th, 1943.

Together with any and all other personal property which may have been placed on said premises to replace any of said personal property described in said Bill of Sale.

All of the above real and personal property for the sum of \$75,000.00, which said sum shall be paid as follows: \$25,000.00 in cash upon the execution and delivery of this contract, receipt whereof is hereby duly acknowledged and the balance of said purchase price, to-wit, \$50,000.00, together with interest thereon at the rate of 11½% per annum from date hereof, shall be paid by the said second parties paying to

first parties 20% of the gross income received from all of the crops produced on said premises the first payment thereof to be made by January 5, 1946, and thereafter the said payment shall be made on January 5th of each and every year until the said purchase price and interest shall have been paid in full; it is however understood and agreed that said second parties shall have the right to pay the unpaid balance of principal and interest at any time they may desire and should the entire balance be paid before January 16th, 1946, then first parties will waive the payment of any interest, and second parties will then pay any and all expenses in connection with the execution of the deed, continuation of certificate of title and all legal expenses.

It is understood and agreed that all buildings, structures and improvements on said premises or any which may hereafter be placed thereon, shall become appurtenant to the land and none thereof shall be removed without first parties written consent.

It is understood and agreed that said second parties shall from this date on be entitled to the possession and occupancy of said premises and to any and all crops which from this date on may be produced on said premises and it is further understood and agreed that said second parties will farm the said premises in a good and farmerlike manner and according to the usual good farming practices in that neighborhood.

It is understood and agreed that the taxes on said premises, including the second installment of 1944-

45 State, County and School taxes have been paid and the water taxes for 1945 have been paid and that the same shall not be prorated and thereafter second parties shall pay all taxes and assessments levied on the above described property.

It is understood and agreed that this agreement includes the transferring of all of first parties right, title and interest in the title to 500 shares in the Muscat Cooperative Winery located between Kingsburg and Selma and from this date on said shares of stock shall become the sole and separate property of second parties, provided however that second parties will, on this date assign to said first parties 50% of all payments to be made on account of delivery of grapes from the above described premises during the years 1943 and 1944 to said winery.

It is also understood and agreed that some of the grapes produced on said premises have been delivered to the Sanger Winery Association and that as the payments are made by the Sanger Winery Association to second parties the same will be divided promptly and a check mailed to first parties for their one-half interest therein and that the money which either party hereto may collect from Young Yoon on account of crops which have been sold to him by the parties hereto during the year 1944, from the above described premises, shall be equally divided between the parties hereto and one-half thereof shall be remitted by the party collecting the same to the other party upon receipt thereof; it being understood and agreed that second parties will give to first parties a statement for the tonnage

delivered to the Muscat Cooperative Winery and the Sanger Winery Association upon the execution of this agreement.

It is understood and agreed that first parties hereto and some of second parties have been jointly operating the above described real property since the purchase of the same, and that there is now in the partnership fund the sum of \$15,000.00 in cash and that there shall be deducted out of this fund all of the expenses which have been incurred in operating the above described premises up to and including January 16th, 1945, and then the balance thereof shall be equally divided between the parties hereto as well as any additional income which has been received to date hereof.

It is also understood and agreed that any expenses commencing with January 17, 1945, shall be paid for by the said second parties and should any further bills turn up for the operating of said ranch properties which are not now known in connection with the operation of said premises, then the same shall be paid for by second parties, save and except that when the parties hereto receive from their insurance carrier a statement covering the labor compensation insurance on said ranch up to January 17th, 1945, that then one-half thereof shall be paid by first parties to second parties.

It is understood and agreed that in the event second parties, during the term of this contract, decide to dispose of said premises, that then first parties shall execute and deliver a deed to all of their right, title and interest in and to the above

described property and shall then be entitled to receive a promissory note for the balance of the unpaid purchase price for the real and personal property and said note or notes shall be secured by a first trust deed on the above described premises, and it is agreed that first parties shall not convey title to their one-half interest in said property to any other person or persons, excepting second parties or second parties assigns, without the written consent of said second parties.

It is understood and agreed that when said second parties shall have paid the said \$75,000.00 together with interest thereon, the purchase price of the real and personal property, and any and all other sums which may be owing first parties under the terms of this contract, and when second parties shall have otherwise complied with all of the terms and conditions on their part to be kept and complied with, then first parties, or their heirs or assigns will execute and deliver to second parties or to their heirs or assigns, a good and sufficient deed of Grant, Bargain and Sale, conveying the said premises to the second parties free and clear of any and all encumbrances made, done or suffered by first parties, and it is understood and agreed that first parties will execute and deliver to second parties a Bill of Sale to all of the above described **personal property**, conveying first parties undivided one-half interest therein to second parties. First parties further agree that they will, at the time of the delivery of said deed to second parties, continue to date of said deed, a certificate of title to said premises showing

said premises to be free and clear of any and all encumbrances made, done or suffered by first parties, excepting any and all reservations and rights of way which were of record on February 24th, 1943, the date of the title insurance issued by the Title Insurance and Guaranty Company on that date to the parties hereto, and the said certificate of title shall then become the property of second parties.

It is understood and agreed by and between the parties hereto that in the event that said second parties should fail, neglect or refuse to keep or comply with any of the terms of this contract on their part to be kept and complied with, then first parties may at their option, consider this contract terminated and at an end and shall cancel said contract and that they shall from said date on become the owners of the undivided one-half interest in said property, which they are, under this contract, selling to the said second parties, and second parties shall, at the option of first parties, forfeit all of their rights to the undivided one-half interest which the said first parties are by this agreement selling to second parties, and all money which second parties have heretofore paid under the terms of this contract shall be kept and retained by first parties and shall be deemed as a reasonable rental for the use and occupancy of said premises up to the time of such default, and first parties shall thereupon be released from all obligations in law or in equity to convey their one-half interest in said premises to second parties or to their heirs or assigns.

It is further understood and agreed by and be-

tween the parties hereto that from this date on second parties shall be responsible for any and all debts or claims arising out of the farming operations on said premises and the harvesting of said crops and any and all other operations of any and all kinds whatsoever which may arise out of the operating of said ranch properties.

In the event of suit on this contract for noncompliance with the terms hereof by either party the court having jurisdiction shall allow the successful party a reasonable attorney fee in such suit, to be made a part of the judgment therein.

It is understood and agreed that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties hereto and that time is of the essence of this contract.

In Witness Whereof, the parties hereto have hereunto signed their names and executed these presents in triplicate the day and year first above written.

/s/ CHRIS A. SORENSEN,

/s/ KATHERINE SORENSEN,

First Parties.

/s/ FLOYD J. HARKNESS,

/s/ MOLLY A. HARKNESS,

/s/ HARRIET HARKNESS

COLGATE,

/s/ WILLIAM H. COLGATE,

JR.

/s/ FLOYD JAMES
HARKNESS, JR.,

By /s/ FLOYD J. HARKNESS,
His Attorney in Fact.

/s/ EARL D. HARKNESS,

/s/ GLADYS M. HARKNESS,
Second Parties.

(All signatures acknowledged January 17, 1945, before Julius Hansen, a Notary Public in and for the County of Fresno, State of California.)

EXHIBIT 4-D

Analysis C. A. Sorensen Income From River Ranch

1943	50% share	\$60,309.92
1944	50% share	33,412.48
1945	50% share co-op payments crops delivered 1943-1944	34,013.47
1946	50% share co-op payments crops delivered 1943-1944	16,574.39
		<hr/>
		\$144,310.26
		<hr/>
Book value—River Ranch as of 1/1/45		\$64,290.59
		50%
		<hr/>
C. A. Sorensen—50% share		32,145.30
C. A. Sorensen sold his 50% share to United Pkg. Co. for		74,500.00
		<hr/>
C. A. Sorensen made capital gain on transaction of		42,354.70

* * * * *

Deliveries From River Ranch to Co-Op Wineries:

1944—Sanger Winery	731,000 lbs.
1943—Sanger Winery	750,420 lbs.
1944—Muscat Co-Op Winery	1,022,400 lbs.
1943—Muscat Co-Op Winery	494,385 lbs.

* * * * *

United Packing Co.						
Bonuses Paid						
(in addition to regular monthly salary)						
	C. E. Bunney	E. M. Harper	O. M. Lucas	R. W. Weigum	A. G. Larson	F. R. Coddington
1947.....	8,167.47	13,612.44	1,709.20	2,093.52	3,000.00	4,200.00
1946.....	4,832.06	4,832.06	1,139.73	916.98	3,000.00	4,200.00
1945.....	5,859.96	5,859.96	1,543.61	.....	.....	3,325.00
1944.....	6,694.08	6,694.08	.....	.....	.....	.....
1943.....	7,532.96	7,532.96	.....	.....	.....	.....
1942.....	2,932.35	2,932.35	.....	.....	.....	.....
1941.....	.....	.....	.....	.....	.....	.....
1940.....	.....	.....	.....	.....	.....	.....
1939.....	.....	.....	.....	.....	.....	.....
1938.....	.....	.....	.....	.....	.....	.....
1937.....	.....	.....	.....	.....	.....	.....
C. D.						
	Hoekersmith	R. A. Northrop	M. G. Mosesian	E. F. Scoggins	H. R. Heppner	H. B. Stafford
1946.....	3,000.00	916.98	2,750.00	.....	3,600.00	.....
1945.....	2,375.00	.....	.....	1,400.24	1,800.00	.....
1944.....	2,394.58	.....	.....	11,231.68	.....	1,010.95
1943.....	.....	.....	.....	7,941.82	.....	.....
1942.....	.....	.....	.....	5,724.70	.....	.....
1941.....	.....	.....	.....	1,096.57	.....	.....
1940.....	.....	.....	.....	719.27	.....	.....
1939.....	.....	.....	.....	214.24	.....	.....
1938.....	.....	.....	.....	106.73	.....	.....
1937.....	.....	.....	.....	.....	.....	.....
F. S. Ferrone						
1,466.17						

Molly A. Harkness vs.

United Packing Co. Percentage Deals				
	C. E. Steiger (25% of net)	C. A. Sorensen (25% of net) (Clovis-Sanger) Fruit shipping operations only.	C. D. Wylie (50% of net Arvin)	H. Johnson (Lodi)
1947				
1946				
1945				
1944		38,569.17		
1943		53,283.59	11,634.63	
1942	4,275.91	23,989.03		1,933.79 (50/50)
1941	6,131.41	4,936.51		
1940	7,977.80	Straight Salary		
1939	5,772.17	Straight Salary		
1938	4,722.23	Straight Salary		661.06 (40% of net)
1937	3,706.31	Did not work		

C. A. Sorensen entered the shipping business in 1945, for himself as a competitor under his own name.

E. L. Barr, former district manager for United Packing Co. at Sanger, started a partnership with our leading grower of the Sanger District operating under the name of Barr & Droge, now operates as Barr Packing Co. This was begun in 1926 or 1927.

	R. A. Northrop 50%
1943.....	\$12,508.03
1944.....	16,848.20
1945.....	2,375.02
1946.....	13,808.52

During the above period, R. A. Northrop was employed by United Packing Co. as district field man for which he received a salary in addition to the above division of profits derived from leases of tokay vineyards, all of which were financed 100% by United Packing Co.

EXHIBIT 6-F

Floyd J. Harkness, Sr., and Molly A. Harkness
Fresno, California

Year—1943		Withdrawals	Additions	Balance
1/12	Dr. Griffin	\$ 271.00		
14	Mutual Life	136.15		
2/ 1	Cash	230.00		
4	Cash	250.00		
24	M. J. Lockhart	100.00		
3/ 1	Cash	230.00		
20	Cash	50.00		
4/ 1	Cash	230.00		
16	Cash	200.00		
5/ 3	Cash	230.00		
17	Union Central	44.35		
6/ 1	Cash	230.00		
5	J. H. Reiss	47.50		
25	War Damage Insurance	19.00		
30	Cash	200.00		
7/ 1	Traveler Insurance Co.	65.95		
15	Cash	230.00		
8/ 2	Cash	230.00		
9/ 4	Cash	230.00		
8	Cash	15,000.00		
10/ 4	Cash	230.00		
11/ 1	Cash	230.00		
5	County Taxes	455.60		
6	Cash	300.00		

Floyd J. Harkness, Sr., and Molly A. Harkness—(Continued)

Year—1943 (Continued)	Withdrawals	Additions	Balance
17 Cash	\$ 50.00		
24 Cash	7,350.00		
12/ 3 Cash	230.00		
4 First Presbyterian Church	250.00		
14 Collector of Internal Revenue	95,946.97		
15 Cash	300.00		
20 McNeill	13.18		
24 Cash	200.00		
31 1943 Profit Participation—United Packing Co. F.J.H.		\$ 71,645.50	
31 1943 Profit Participation—United Packing Co. M.A.H.		71,645.50	
31 1943 Salary—Floyd J. Harkness, Sr.		75,000.00	
Total.....	<u>\$123,779.70</u>	<u>\$218,291.00</u>	<u>\$ 94,511.30</u>
Year—1944			
Total Withdrawals	\$ 31,680.67		
Credit to Increase Capital to \$65,000.00	30,439.60		
Credit to Increase Capital to \$65,000.00	30,439.59		
Profit from McNeill Ranch		208.37	
12/31 Cash		25,000.00	
4/14 Cash		20,000.00	
5/17 Cash		61,578.94	
12/31 1944 Profit Participation—United Packing Co. F.J.H.		61,578.95	
12/31 1944 Profit Participation—United Packing Co. M.A.H.		75,000.00	
12/31 1944 Salary—Floyd J. Harkness, Sr.			
Total.....	<u>\$ 92,559.86</u>	<u>\$243,366.26</u>	<u>\$150,806.40</u>
			<u>\$245,317.70</u>

Year—1945				
	Total Withdrawals	\$172,694.44		
	Dividend from Kings River Farm Loan Ass'n.		\$ 9.40	
12/31	Profit from McNeill Ranch		859.27	
12/31	1945 Profit Participation—United Packing Co. F.J.H.		51,569.48	
12/31	1945 Profit Participation—United Packing Co. M.A.H.		51,569.48	
12/31	1945 Salary—Floyd J. Harkness, Sr.		75,000.00	
	Total.....	\$179,007.63	\$ 6,313.19	
			<u>\$251,630.89</u>	
Year—1946				
1/ 5	C. S. Pierce & W. Byde Co.	\$ 12.30		
	Cash	325.00		
14	Collector of Internal Revenue	101,300.00		
15	Travelers & Mut. Ins. Co.	1,617.85		
2/ 1	Cash	325.00		
4	W. Byde & Co.	6.66		
23	Cash	150.00		
3/ 1	Cash	325.00		
2	Water Heater	42.80		
4	W. Byde & Co.	48.39		
7	Cash	50.00		
	Collector of Internal Revenue	11,302.41		
13	Collector of Internal Revenue	460.75		
	Santa Cruz Ld.	52.05		
14	Trustees of I.O.O.F.	375.00		
	J. A. Andrews	25.60		
15	W. E. Bauman	105.30		

Floyd J. Harkness, Sr., and Molly A. Harkness—(Continued)

Year—1946 (Continued)		Withdrawals	Additions	Balance
26	Cash	\$ 100.00		
4/ 1	W. E. Bauman	61.20		
2	Cash	325.00		
4.	W. Byde & Co.	23.18		
	Franchise Tax Commissioner	1,423.99		
	Pauls Plumbing	20.97		
5	Franchise Tax Commissioner	1,423.00		
8	Feller Planing Mill	81.80		
9	8# Butter	5.07		
15	Cash	700.00		
30	Cash	200.00		
5/ 1	Cash	200.00		
10	Cash	300.00		
16	Union Central	44.73		
6/ 1	Cash	400.00		
4	Collector of Internal Revenue	460.75		
	Traveler Insurance Co.	47.50		
22	Mrs. D. Fallbush	100.00		
26	Cash	250.00		
7/ 1	Cash	225.00		
3	Traveler Insurance Co.	65.95		
6	W. Byde & Co.	12.81		
10	Cash	200.00		
30	Cash	100.00		
8/ 1	Cash	400.00		
5	W. Byde & Co.	12.30		

6	State Income Tax	\$ 2,846.99	
12	Jim Hubner	300.00	
13	The Kliezoyen Co.	100.45	
18	Cash	337.50	
9/ 3	Cash	325.00	
9	Collector of Internal Revenue	460.75	
11	W. Byde & Co.	66.37	
	Roth Furniture	192.44	
10/ 1	Cash	325.00	
11	Cash	1,000.00	
11/ 1	Cash	367.50	
18	Cash	1,000.00	
26	County Taxes	546.69	
12/ 2	Cash	325.00	
	State Income Tax	2,846.99	
4	W. Byde & Co.	11.43	
14	Taxes—Santa Cruz	11.79	
	Insurance—McNeill Ranch	36.21	
16	Cash	500.00	
27	W. Byde & Co.	2.93	
	Selma Ranch Tractor Credit		\$ 94.03
12/31	Profit—McNeill Ranch		830.16
12/31	1946 Profit Participation—United Packing Co. F.J.H.		13,849.87
12/31	1946 Profit Participation—United Packing Co. M.A.H.		13,849.86
12/31	1946 Salary—Floyd Harkness, Sr.		75,000.00
	Total.....	\$135,310.40	\$ 103,623.92
			\$ 31,686.48
			\$219,944.41

[Italicized figures shown in red.]

Year—1947	Withdrawals	Additions	Balance
1/14	Travelers Insurance Co.	\$ 1,487.75	
	Mutual Life	130.00	
3/ 8	Payroll 3/7	16.80	
5/14	Union Central	44.93	
	Prescott Lumber	35.89	
6/ 9	Collector of Internal Revenue	370.50	
12	J. H. Reiss—(Insurance)	47.50	
7/ 4	Travelers Insurance	65.95	
8/ 7	State Treasurer	2,106.37	
9/ 5	Collector of Int. Revenue	370.50	
9	W. Byde & Co.	41.09	
10/11	Aram's Appliance—Freezer	230.63	
11/13	First Presbyterian Church	100.00	
22	H. H. Gehrke—County Taxes	534.02	
12/ 3	State Treasurer	2,106.36	
12/31	Profit—McNeill Ranch	\$ 158.76	
12/31	1947 Profit Participation—United Packing Co. F.J.H.	21,476.35	
12/31	1947 Profit Participation—United Packing Co. M.A.H.	21,476.35	
12/31	1947 Salary—Floyd J. Harkness, Sr.	75,000.00	
	Total.....	\$ 118,111.46	\$ 35,423.17
	Balance — 12/31/47		\$255,367.58
	Capital Set Up in 1944		130,000.00
	Total Capital 12/31/47		\$385,367.58

Floyd J. Harkness, Jr.
Fresno, California

Year—1942	Withdrawals	Additions	Balance
12/31 Balance			\$ 1,412.05
Year—1943			
1/22 License—Dodge	\$ 20.00		
2/18 F. J. Harkness	1,392.05		
12/31 F. J. Harkness (Repay Note and Interest)	34,495.08		
12/31 1943 Profit Participation—United Packing Co.		\$ 71,645.50	
Total.....	<u>\$ 35,907.13</u>	<u>\$ 71,645.50</u>	<u>35,738.37</u>
			<u>\$ 37,150.42</u>
Year—1944			
7/ 8 War Bonds	\$ 300.00		
12/ 4 New York Life Premium	31.58		
12/31 Credit to Increase Capital to \$65,000.00	30,439.60		
Money Order Received		\$ 300.00	
12/31 1944 Profit Participation—United Packing Co.		61,578.95	
Total.....	<u>\$ 30,771.18</u>	<u>\$ 61,878.95</u>	<u>31,107.77</u>
			<u>\$ 68,258.19</u>

Floyd J. Harkness, Jr.—(Continued)

Year—1945	Withdrawals	Additions	Balance
1/10 Riggs Optical	\$ 11.28		
5/17 Ferrari-Nicker	21.78		
5/18 Riggs Optical	18.45		
5/25 War Bonds	600.00		
12/ 1 N.Y. Life	31.58		
Money Order Received		\$ 575.00	
1945 Profit Participation—United Packing Co.		51,569.49	
Total.....	\$ 683.09	\$ 52,144.49	51,461.40
			\$119,719.59
Year—1946			
1/11 Cash	\$ 125.00		
2/15 Cash	125.00		
2/28 Cash	125.00		
3/13 Collector of Internal Revenue (1946)	152.48		
3/30 Cash	250.00		
4/ 4 Franchise Tax Commissioner	2,522.95		
4/30 Cash	250.00		
5/28 Collector of Internal Revenue (1943)	41,423.52		
5/28 Collector of Internal Revenue (1944)	35,645.15		
5/31 Cash	250.00		
6/ 4 Collector of Internal Revenue (1946)	152.48		
6/14 Collector of Internal Revenue (1945)	28,654.87		
6/15 State Income Tax	3,781.78		

7/ 2	Cash	250.00	
7/31	Cash	250.00	
8/ 6	State Income Tax	632.06	
9/ 3	Cash	250.00	
9/ 9	Collector of Internal Revenue	152.48	
9/30	Cash	250.00	
10/31	Cash	250.00	
11/16	Southern Realty	3,000.00	
12/ 2	Cash	250.00	
	State Income Tax	632.05	
12/26	Cash	1,500.00	
	W. Byde and Company	7.32	
	Payroll Advance		\$ 12.72
12/31	Repaid		7,132.32
12/31	1946 Profit Participation—United Packing Co.		13,849.87
12/31	1946 Salary—Floyd J. Harkness, Jr.		57,984.75
	Total.....	\$178,866.89	\$ 78,979.66
			<u>\$ 19,832.36</u>

Year—1947

2/ 3	W. Byde Co.	\$ 34.06
3/ 3	W. Byde Co.	29.18
3/27	M. J. Lowell	28.00
4/ 3	Schultz Body Works	5.50

[Italicized figures shown in red.]

Floyd J. Harkness, Jr.—(Continued)

Year—1947 (Continued)	Withdrawals	Additions	Balance
W. Hyde Co.	\$ 3.08		
5/14 Prescott Lumber	4.40		
5/19 W. E. Bauman	5.40		
6/ 3 Sorensen Machine	5.22		
6/ 4 Wagner Plumbing	28.50		
6/ 5 W. Hyde Co.	23.46		
Arams Appliance	128.64		
6/ 9 Collector of Internal Revenue	167.50		
8/ 7 C. S. Pierce Lumber	10.15		
9/ 5 Collector of Internal Revenue	167.50		
Payroll Advance		\$ 20.00	
12/31 1947 Profit Participation—United Packing Co.		21,476.35	
12/31 1947 Salary—Floyd J. Harkness, Jr.	53,635.13	53,635.13	
Total.....	\$ 54,275.72	\$ 75,131.48	\$ 20,855.76
Balance — 12/31/47			\$ 40,688.12
Capital Set Up in 1944			65,000.00
Total Capital — 12/31/47			\$105,688.12

Year—1943	Withdrawals	Additions	Balance
7/19 Cash	\$ 112.97		
9/13 Collector of Internal Revenue	1,070.89		
12/14 Collector of Internal Revenue	31,423.67		
12/31 F. J. Harkness (Repay Note and Interest)	35,942.82		
12/31 1943 Profit Participation—United Packing Co.		\$ 71,645.50	\$ 3,095.15
Total.....	\$ 68,550.35	\$ 71,645.50	\$ 3,095.15
Year—1944			
1/15 Cash	\$ 1,000.00		
3/13 Collector of Internal Revenue	217.21		
3/24 Santa Fe Tickets	59.16		
4/ 5 State Income Tax	666.19		
4/10 Collector of Internal Revenue	81.40		
6/ 7 S.P. Co.	114.58		
6/ 8 Cash	50.00		
6/12 Collector of Internal Revenue	81.40		
8/ 2 State Income Tax	666.19		
8/30 Santa Fe	143.99		
9/ 1 Collector of Internal Revenue	81.40		
12/ 5 State Income Tax	666.19		
12/31 Credit to Increase Capital to \$65,000.00	30,439.60		
12/31 1944 Profit Participation—United Packing Co.		\$ 61,578.95	
12/31 William H. Colgate Salary	450.00	450.00	\$ 27,311.64
Total.....	\$ 34,717.31	\$ 62,028.95	\$ 30,406.79

William H. and Harriet Harkness Colgate—(Continued)

Year—1945	Withdrawals	Additions	Balance
1/ 9	Collector of Internal Revenue	\$ 81.36	
1/13	Collector of Internal Revenue	14,013.14	
1/13	Collector of Internal Revenue	13,688.06	
2/ 3	Cash	1,000.00	
3/13	Collector of Internal Revenue	98.25	
4/11	State Income Tax	505.75	
6/11	Collector of Internal Revenue	98.25	
8/ 7	State Income Tax	505.75	
9/ 8	Collector of Internal Revenue	295.91	
12/ 1	State Income Tax	505.75	
12/31	1945 Profit Participation—United Packing Co.	\$ 51,569.49	\$ 20,777.27
12/31	William H. Colgate Salary	5,375.00	\$ 51,184.06
	Total.....	\$ 36,167.22	
Year—1946			
1/14	Collector of Internal Revenue	\$ 10,089.39	
	Collector of Internal Revenue	10,293.36	
1/24	San Joaquin Abstract	6,750.00	
2/ 5	Pauls Plumbing	35.55	
2/14	W. E. Bauman	81.00	
2/28	W. E. Bauman	110.70	
3/ 4	W. Hyde & Co.	51.15	
3/ 4	Central Rock	7.90	

3/ 5	Wagner Furniture	\$	3.53
	Pierce Lumber		51.42
	Pierce Lumber		73.81
	Sanger Sash		60.07
3/ 8	Collector of Internal Revenue		1,498.01
3/ 9	Collector of Internal Revenue		1,469.48
3/13	Feller Planing Mill		6.50
	Collector of Internal Revenue		54.02
	Collector of Internal Revenue		30.28
3/16	Payroll		34.00
4/ 4	Traveling Comm.		390.74
	Wagner Plumbing		23.72
	Pauls Plumbing		17.22
4/ 9	8# Butter		5.07
6/ 4	W. E. Bauman		36.00
6/ 5	Collector of Internal Revenue		84.30
7/ 3	R. W. Weiginn—Lawn Mower		29.58
7/ 6	W. Hyde & Co.		3.08
8/ 6	State Income Tax		390.74
8/24	Cash		1,000.00
9/ 6	Trann Appliance		73.03
	Collector of Internal Revenue		84.30
9/14	Payroll 9/13		36.80
10/ 5	Penny-Newman		1.80
12/ 2	State Income Tax		390.74

William H. and Harriet Harkness Colgate—(Continued)

Year—1946 (Concluded)	Withdrawals	Additions	Balance
7/23 Check from H. Colgate		\$ 3,984.00	
12/31 1946 Profit Participation—United Packing Co.		13,849.86	
12/31 William H. Colgate Salary	\$ 46,554.79	46,554.79	\$ 15,433.43
Total.....	\$ 79,822.08	\$ 64,388.65	\$ 35,750.63
Year—1947			
1/14 W. E. Bauman	\$ 36.90		
2/28 W. E. Bauman	14.40		
3/10 S.P. Co. Tickets	379.62		
6/ 2 W. E. Bauman	1.80		
6/ 9 Collector of Internal Revenue	120.00		
12/31 Bill Smith Motors	34.15		
Payroll Advance		\$ 10.00	
12/31 1947 Profit Participation—United Packing Co.		21,476.35	
12/31 William H. Colgate Salary	35,928.45	35,928.45	20,899.48
Total.....	\$ 36,515.32	\$ 57,414.80	\$ 56,650.11
Balance			\$ 56,650.11
Capital Set Up in 1944			65,000.00
Total Capital 12/31/47			\$121,650.11

[Italicized figures shown in red.]

Exhibit 7-G

Grant Deed

Shoichi Haranga, also known as S. Haranaga, and Kimiye Haranaga, his wife, in consideration of Ten Dollars to them in hand paid, the receipt of which is hereby acknowledged, do hereby grant to Chris A. Sorensen and Katherine Sorensen, his wife, an undivided onehalf interest, and Floyd J. Harkness, Molly A. Harkness, his wife, Harriet Harkness Colgate and Floyd J. Harkness, Jr., an undivided one-half interest, in and to real property situated in the County of Fresno, State of California, described as follows:

Parcel 1:

All that portion of Section 5, Township 15 South, Range 23 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats, described as follows:

Commencing at a point on the West line of said Section which is 316.5 feet southerly from the northwest corner of said Section 5; thence South $10^{\circ} 56'$ East 99.8 feet to the center line of Cameron Slough; thence following the center line of Cameron Slough, as follows, to wit: South $39^{\circ} 33'$ East 90 feet, South $29^{\circ} 36'$ East 300 feet, South $41^{\circ} 40'$ East 300 feet, South $63^{\circ} 19'$ East 290 feet, North $83^{\circ} 45'$ East 160 feet, South $49^{\circ} 15'$ East 200 feet, South $25^{\circ} 52'$ East 300 feet, South $16^{\circ} 43'$ East 260 feet, South $13^{\circ} 23'$ West 245 feet, South $37^{\circ} 57'$ East 500 feet, South $59^{\circ} 43'$ East 130 feet, South $15^{\circ} 28'$ East 300 feet and South $7^{\circ} 24'$ East 490 feet to the center line of Kings River; thence South $7^{\circ} 24'$ East to the intersection

with the Government Meander Line, to the same being the South boundary of Lot 10 of said Section 5, according to the Government Survey; thence westerly following the said Government Meander Line to the West Line of said Section 5; thence Northerly along the West line of said Section 5 to the point of commencement.

Parcel 2:

Commencing at the northeast corner of Section 6, Township 15 South, Range 23 East, Mount Diablo Base and Meridian, according to the United States Government Surveys, and running thence South 200 rods, to the center of Kings River; thence westerly up and along said center of said river to a point where said center of said river intersects with the center of North and South center line of said Section 6; thence North 10 chains, more or less, to the United States Segregation line North of said river; thence northwesterly along said Segregation Line to the southwest corner of Lot 2 of said Section 6; thence North 20 chains, more or less, to the northwest corner of said Lot 2; and thence East along the North line of said Section 60 chains to the place of beginning.

Also, that part of the South half of the northwest quarter of Section 6, Township 15 South, Range 23 East, M.D.B.&M. lying North of Kings River and South of the United States Segregation Line on the North side of Kings River; Excepting from the above land the following: Commencing at the northeast corner of Lot 2 (United States Government Survey and Plat), being also the one-quar-

ter section corner on the North line of Section 6, Township 15 South, Range 23 East, Mount Diablo Base and Meridian; thence South along the half section line through said Section 6, 2251.8 feet; thence North $47^{\circ} 49'$ West, 888.00 feet; thence North $75^{\circ} 37'$ West, 691 feet; thence North $5^{\circ} 46'$ West 86.50 feet; thence East 16.00 feet to the southwest corner of said Lot 2; thence North along the West line of said Lot 2, 1419.10 feet to the northwest corner of said Lot 2; thence South $89^{\circ} 7'$ East along the North line of said Lot 2, being also the North line of said Section 6, 1320 feet to the point of commencement.

Together with any and all Riparian Water rights of the Kings River, which are now attached and belong to the above-described real property.

Together with any and all rights of way for roads running from the northwest corner of grantors' property to Malaga Avenue which have heretofore been established by usage, agreements or deeds, and also any and all rights of way for telephone lines and power lines used in connection with the above-described real property.

Together with the appurtenances thereunto belonging,

Witness, our hands and signatures the 2nd day of February, 1943.

SHOICHI HARANAGA,

S. HARANAGA,

Also known as S. Haranaga.

KIMIYE HARANAGA,

Grantors.

State of Arizona,
County of Pinal—ss.

On this 2nd day of February, 1943, before me, Ben T. Tsudama, a Notary Public in and for said County and State, personally appeared Shoichi Haranaga, also known as S. Haranaga and Kimiye Haranaga, husband and wife, known to me to be the persons whose names are subscribed to the within Instrument, and acknowledged to me that they executed the same.

Witness my hand and official seal.

BEN T. TSUDAMA,
Notary Public in and for said County and State.

My commission expires Nov. 11, 1946.

Bill of Sale

Know All Men By These Presents:

That We, Shoichi Haranaga, also known as S. Haranaga, and Kimiye Haranaga, his wife, formerly of the County of Fresno, State of California, but now residing in the State of Arizona, parties of the first part, in consideration of the sum of Ten Dollars, lawful money of the United States of America to them in hand paid by Chris A. Sorensen and Katherine Sorensen, his wife, and Floyd J. Harkness, Molly A. Harkness, Harriet Harkness Colgate and Floyd J. Harkness, Jr. co-partners, doing business under the firm name and style of United Packing Co., a co-partnership, parties of the second part, the receipt whereof is hereby acknowledged,

do by these presents sell and convey unto said second parties, their heirs, executors, administrators and assigns, that certain personal property situated in the County of Fresno, State of California, and described as follows:

Two mules and harness

Two horses and their harness

One Ford Tractor

One disc and sulphur duster

One Case tractor

Two 10-HP motors and two 5-inch pumps

One Goble disc

One Case plow

One Unitiler

One tractor spring harrow

One Bean spray machine

Three vineyard trucks

One 1000 gallon Butane tank

One Chevrolet truck

One 1937 Ford truck

One 1939 Ford truck

One tractor disc

Three-fourths mile telephone line

Power line

One new tractor brush rake

Two 550 gallon gas storage tanks with two pumps

One 1500 gallon gas storage tank

Together with horse tools and other implements consisting of one mower, plows, cultivators rake and steel-wheel truck. Together with any and all other farm tools and equipment belonging to gran-

tors now located upon the real property which grantors are selling to grantees located in Sections 5 and 6 in Township 15 South, Range 23 East, M.D.B.&M.

To Have and to Hold the same unto the parties of the second part, their heirs, executors, administrators and assigns forever.

And we do for our heirs, executors and administrators covenant and agree with the parties of the second part, their heirs, executors, administrators and assigns, to warrant and defend the sale of the said property, goods and chattels unto the parties of the second part, their heirs, executors, administrators and assigns against all and every person and persons whomsoever lawfully claiming or to claim the same.

In Witness Whereof, we have hereunto set our hands this 16th day of January, 1943.

SHOICHI HARANAGA,

S. HARANAGA,

Also Known as S. Haranaga.

KIMIYE HARANAGA,

Wife of Shoichi Haranaga.

State of Arizona,
County of Pinal—ss.

On this 16th day of January in the year one thousand nine hundred and forty-three, before me, Ben T. Tsudama, a Notary Public in and for the County of Pinal, State of Arizona, residing therein, duly commissioned and sworn, personally appeared Shoichi Haranaga, also known as S. Haranaga, &

Kimiye Haranaga, his wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In Witness Whereof I have hereunto set my hand and affixed my official seal in the County of Pinal, the day and year in this certificate first above written.

BEN T. TSUDAMA,

Notary Public in and for the County of Pinal,
State of Arizona.

My commission expires Nov. 11, 1946.

EXHIBIT 8-H

This Supplemental Agreement, made and entered into this 11th day of January, 1946, by and between Floyd J. Harkness, first party; Molly A. Harkness, second party; Floyd James Harkness Jr., third party; Harriet Harkness Colgate, fourth party; and William H. Colgate Jr., fifth party,

Witnesseth

That Whereas the first four parties herein above-mentioned did on the 31st day of December, 1942, enter into Articles of Co-partnership under the firm name and style of "United Packing Co.", and

Whereas under and by virtue of the terms of a Supplemental agreement made and entered into on the 16th day of January, 1945, by and between the above-named parties, William H. Colgate Jr. fifth party, became a co-partner in the said co-partner-

ship as a participant in his wife Harriet Harkness Colgate's one-fourth of the partnership profits; and that the said Supplemental agreement further provided that the said fifth party should work for the said co-partnership as a field man and receive for such services a regular field man's salary until the said third party, namely Floyd James Harkness, Jr., should return to active participation as a co-partner; and it is now understood and agreed that the said third party, Floyd James Harkness Jr. has returned to Fresno, California, from his services in the United States armed forces, and that for the year 1946, the said fifth party, William H. Colgate Jr. is to receive as compensation for his services for working for said co-partnership 25% of the net profits of the Clovis and Sanger district deals; and 25% of the net profits from any other deals in which he is actively in charge; and it is now understood and agreed that the said third party, Floyd James Harkness Jr. has returned to active participation as a co-partner; and that he is for the year 1946 hereby appointed as Assistant Manager of all operations of the co-partnership; and that for his compensation for his services as Assistant Manager for the year 1946 he is to receive 25% of the net profits of the said co-partnership.

It is further understood and agreed that the first party is to continue to receive for the year 1946 for his services as Manager of the said United Packing Co. 75% of the net income from the said co-partnership up to the amount of \$100,000.00 net income of the said co-partnership; and that the parties hereto

shall after the payment of the above-named net profits to first, third and fifth parties receive their divisions of the balance of the net income in accordance with the terms of the said original Articles of Co-partnership and the modifications thereto wherein and whereby first party is to receive 25% of such net income; second party is to receive 25% of said net income; third party is to receive 25% of said net income; and fourth and fifth parties are to receive the other 25% of said net income.

It is understood and agreed by and between the parties hereto that the said original Articles of Co-partnership dated December 31, 1942, shall remain in full force and effect except as herein modified by the Supplemental Agreement entered into on the 4th day of January, 1943, by the first four parties hereto, and except as modified by the Supplemental Agreement entered into on the 16th day of January, 1945, by and between all of the parties hereto, and except as herein modified by this Supplemental Agreement.

In Witness Whereof the parties hereto have hereunto set their hands and signatures the day and year in this agreement first above written.

FLOYD J. HARKNESS,
First Party.

MOLLY A. HARKNESS,
Second Party.

FLOYD JAMES HARKNESS, JR.,
Third Party.

HARRIET HARKNESS COLGATE,
Fourth Party.

WILLIAM H. COLGATE, JR.,
Fifth Party.

EXHIBIT 9-I

This Supplemental Agreement, made and entered into this 24th day of January, 1947, by and between Floyd J. Harkness, first party; Molly A. Harkness, second party; Floyd James Harkness Jr., third party; Harriet Harkness Colgate, fourth party and William H. Colgate Jr., fifth party,

Witnesseth:

That Whereas the first four parties herein above-named did on the 31st day of December, 1942, enter into Articles of Co-partnership under the firm name and style of "United Packing Co." and

Whereas under and by virtue of the terms of a supplemental agreement made and entered into on the 16th day of January, 1945, by and between the above-named parties, William H. Colgate Jr., fifth party, became a co-partner in the said co-partnership as a participant in his wife Harriet Harkness Colgate's one-fourth of the partnership profits; and thereafter on the 11th day of January, 1946, another supplemental agreement was entered into by and between the parties above-named for the reason that Floyd James Harkness Jr., third party herein, had returned to Fresno, California, from his service in the United States armed forces, and had re-

turned to active participation of a co-partner and was for the year 1946 appointed as the Assistant Manager of all operations of said co-partnership; and it was further provided in said supplemental agreement that the said William H. Colgate Jr., fifth party, was to receive for his services for working for said co-partnership 25% of the net profits of the Clovis and Sanger district deals and 25% of the net profits from any other deals in which he was actively in charge; and it is now understood and agreed for the year 1947 that William H. Colgate Jr. shall receive the same compensation for the same services for the year 1947; and that Floyd James Harkness Jr., third party is for the year 1947 to remain as Assistant Manager of all operations of the co-partnership; and that for his compensation for his services as Assistant Manager for the year 1947, he is to receive 25% of the net profits of said co-partnership after the payment to William H. Colgate Jr. compensation for his services as above provided.

It is further agreed that the said Floyd James Harkness, Jr., third party, and William Colgate, Jr., fifth party, shall each give his full time to the said co-partnership in the performance of his service for the said co-partnership as herein provided.

It is further understood and agreed that first party is to continue to receive for the year 1947 for his services as Manager of the United Packing Co. 75% of the net income from the co-partnership up to the amount of \$100,000.00 net income of the co-partnership after the payment to William H. Col-

gate Jr. compensation for his services as above-provided; and that the parties hereto shall after the payment of the above-named net profits to first, third and fifth parties, receive their divisions of the balance of the net income in accordance with the terms of the original Articles of Co-partnership and the modifications thereto wherein and whereby first party is to receive 25% of such net income; second party is to receive 25% of said net income; third party is to receive 25% of said net income; and fourth and fifth parties are to receive the other 25% of said net income.

It is understood and agreed by and between the parties hereto that the said original Articles of Co-partnership dated December 31, 1942, shall remain in full force and effect except as modified by the supplemental agreement entered into on the 4th day of January, 1943, by the first four parties hereto; and except as modified by the supplemental agreement entered into on the 16th day of January, 1945, by all the five parties hereto; and except as modified by the supplemental agreement entered into on the 11th day of January, 1946, by and between all of the parties hereto; and except as herein modified by this supplemental agreement.

In Witness Whereof the parties hereto have hereunto set their hands and signatures the day and year in this agreement first above written.

FLOYD J. HARKNESS,
First Party.

MOLLY A. HARKNESS,
Second Party.

FLOYD JAMES HARKNESS, JR.
Third Party.

HARRIET HARKNESS COLGATE,
Fourth Party.

WILLIAM H. COLGATE, JR.,
Fifth Party.

Filed T.C.U.S., January 11, 1949.

The Tax Court of the United States

Docket No. 16407

MOLLY A. HARKNESS,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 16408

FLOYD J. HARKNESS,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Courtroom,

U. S. Appraisers Building, San Francisco,
California, Tuesday, January 11, 1949.

(Met pursuant to notice at 10 o'clock a.m.)

Before: HON: SAMUEL B. HILL,
Judge.

Appearances:

PHILIP S. EHRLICH, Esq., and

R. J. HECHT, Esq.,

2002 Russ Building,

San Francisco, California,

and

LE ROY H. GUNTNER,

Security Bank Building,

Fresno, California,

Appearing on behalf of Petitioners.

T. M. MATHER, Esq.,

(Hon. Charles Oliphant, Chief Counsel,
Bureau of Internal Revenue)

Appearing for the Respondent.

PROCEEDINGS

The Clerk: Docket 16407, Molly A. Harkness;
16408, Floyd J. Harkness.

Announce your appearances, please.

Mr. Ehrlich: Philip S. Ehrlich, R. J. Hecht, and
Le Roy Guntner, representing the Petitioners.

Mr. Mather: T. M. Mather for the Respondent.

Mr. Hecht: May it please your Honor, I have not been admitted to practice before the Court. However, I signed an appearance, and I expect to file my application for admission seasonably with the Court in Washington.

The Court: Will you do that right away?

Mr. Hecht: Yes, your Honor.

The Court: All right. You will be permitted to appear in this case pending your admission on your application to be filed immediately.

Mr. Hecht: Thank you, your Honor.

The Court: State your case for the Petitioners. I take it these two docket numbers will be consolidated for hearing?

Mr. Ehrlich: I want to make a motion to that effect, if I may, your Honor.

The Court: They will be consolidated for hearing.

Make your statement for Petitioners.

OPENING STATEMENT ON BEHALF OF THE PETITIONERS

By Mr. Ehrlich

Mr. Ehrlich: The Petitioners in this case are Floyd J. Harkness and his wife, Molly A. Harkness, residence, Fresno, California. These petitions arise out of the refusal of the Commissioner of Internal Revenue to recognize the co-partnership of Mr. and Mrs. Floyd J. Harkness, their son, Floyd Harkness, Jr., and their daughter, Mrs. Colgate, and son-in-law, William H. Colgate. However, William H.

Colgate, the husband, did not technically become a partner until 1945.

As the result of the Commissioner's refusal to recognize the partnership he assessed additional income and Victory Tax for the calendar year '43 in the sum of \$65,367.27 against Mr. Harkness, and against Mrs. Harkness a deficiency in the sum of \$64,781.64 for the same calendar year, '43. By his action the Commissioner has endeavored to place this co-partnership in the same category as the partnerships condemned by the Supreme Court in the Lusthaus and Tower Case.

We submit the Commissioner has committed an error. The evidence we intend to submit in support of the petition will, in our opinion, support a bona fide partnership for all purposes, not only legal but tax-wise.

The Court: Who were the partners according to your contention for the year 1943 here involved?

Mr. Ehrlich: Floyd Harkness, Sr., Molly Harkness, his wife; Floyd Harkness, Jr., and Harriet Harkness Colgate, his daughter.

The Court: Maybe I misunderstood your statement previously. One of the daughters—were there two?

Mr. Ehrlich: Just one daughter here. The son is Floyd Jr., the father Floyd Harkness, Sr., the mother Molly A. Harkness, and then the daughter, Harriet Colgate.

The Court: Which one was not technically a partner?

Mr. Ehrlich: The son-in-law in '43. He became a partner in '45.

The Court: So he is not involved in this proceeding here?

Mr. Ehrlich: That is correct. He became a partner in '45. We feel it has a materiality and bearing on the subject; that is why I mentioned it.

We feel there are good and sufficient business reasons for this partnership, and it was merely, as we see it, business reasons, which we will adduce in evidence, which prompted Mr. Harkness at this time to create this partnership as well as a desire to take care of his children. The circumstances which existed at this time as will be shown in the evidence, will establish clearly that the partnership was not created for the purpose of minimizing taxes.

It is also interesting to note that if the government is to prevail in this case, it must prevail because of the fact that the son, in any event, who had a draft exemption at the time waived that draft exemption, being he was a member of an essential industry, he waived that draft exemption and went to war. It is our contention if the position of the Commissioner is to be maintained it can only be maintained because of the fact that the son failed to take advantage of his draft exemption, went to war, and was penalized for going to war.

Mr. Harkness, to give your Honor a little background of the situation, Mr. Harkness, Sr., has been in the business of growing, packing, shipping and marketing fresh fruit and vegetables since the year 1917. The business involves acting as a com-

mission agent, as a factor for growers in the region, and this in turn required large financing by Mr. Harkness and his wife in connection with the purchase of fruits from growers. In addition, they grew some of their own commodities.

It is customary in this business, as will appear from the testimony, to lend money to growers in order to help them. As a result of the lending of this money you acquire the right to purchase their crops.

Mr. Harkness was married to Mrs. Harkness July 14, 1915, and the evidence will disclose neither of them has had any separate property, and it was as a result of the marital relations over a period of years that what we commonly call the United Packing, which is the partnership here before the Court, acquired the property which went into the partnership on January 1, 1943. Neither of them during their marital life have received any substantial gifts from any other source, and it is conceded by the stipulation, if your Honor please, that the assets of the partnership, the United Packing Company, which was organized by virtue of a technical legal document, was the community property of Mr. and Mrs. Harkness.

The Court: At the time of the organization of the partnership?

Mr. Ehrlich: That is correct your Honor.

The evidence further discloses that the business which is engaged in by this partnership, and I will have a map showing your Honor the area covered by the partnership, is doing business in what we

commonly call the San Joaquin Valley, and the partnership does business over an area of 250 miles. We think that is important as indicating the necessity for competent men to aid in the operation and management of this business which has spread over a wide area.

Evidence will disclose, if your Honor please, that in a business of this character, the farming business, particularly this type of business, buying and selling raw fruits, both on your own account and for the account of growers, that in order to attract capable personnel it has been necessary to let the personnel either have bonuses as a result of their efforts which they have contributed to the profits of the business, or to give them percentage deals. In this stipulation [8] we will point out to your Honor later we have set forth the percentage deals and bonuses which the United Packing—that is the name of the partnership, United Packing—over a period of years since its organization had been accustomed to give to key personnel, both bonus deals and percentage deals.

The evidence will also indicate, if your Honor please, that these bonus deals and these percentage deals were a continuous drain upon the partnership, and that it was required as a result of this method of doing business which was necessary to acquire these key men, that the partnership was continually in hot water financially and had to continuously engage in large borrowings. One of the motivating forces which induced Mr. and Mrs. Harkness, owners of the partnership at the time they created the

four-way partnership I have just explained, one of the motivating influences was the fact that they wanted this money which was being accumulated to remain in the business so they could grow; and with these percentage and bonus deals, this was impossible of accomplishment. Of course, during the years of unfavorable conditions, lack of money was a great drain, and as your Honor can understand, unless funds could be accumulated during periods of good business, this partnership and many of them in the San Joaquin Valley would always get into financial difficulty.

The evidence will further disclose that Mr. Harkness was employed by a fruit company in the San Joaquin Valley from [9] 1917 to 1920. He was born in Fresno and his whole life has been devoted to farming and agriculture.

From 1920 to 1923 he was employed by the Associated Fruit Company, and while with that company had a participation deal, bonus or percentage of the profits.

The evidence will further disclose that after he left the Associated Fruit Company he organized, together with a Mr. Jasper and Mr. Wilhelm, a partnership of their own, and the profits of this partnership were divided three ways. This one partnership lasted one year, and Mr. Wilhelm was through at the close of '23.

During the years '24 to '36 the business which I have explained to your Honor, strictly agricultural and buying and selling fruits and raising fruits to a lesser degree, consisted of Mr. Jasper and Mr.

Harkness. This partnership was terminated in 1936. So your Honor can clearly understand that Mr. Harkness has had one partnership after the other for the last more or less 30 years, having spent all his time in this particular activity.

At the time of the termination of the partnership relations between Mr. Jasper and Mr. Harkness, the activities of the partnership covered Madera, Fresno, Tulare, Kern, and San Joaquin Counties. During this period Mr. Jasper looked after the office, Mr. Harkness was what we call a field man, tended to the actual buying and selling, raising of crops. [10] The operations covered an area of some 250 miles; the head office was in Fresno.

As a result of the culmination of the partnership, Mr. Jasper took certain property and Mr. Harkness took certain property. Mr. Harkness took primarily the operation end of the game, and Mr. Jasper took the farms.

Even in the partnership between Mr. Jasper and Mr. Harkness which went from '24 to '36, bonus and participation deals were indulged in, the bonuses at that time running five to ten per cent, and participation of a substantial amount. The remaining profits were divided between Mr. Jasper and Mr. Harkness.

In 1937 after the dissolution, the business was conducted by Mr. Harkness, it being the community property of Mr. and Mrs. Harkness, and was called the United Packing Company.

Now that activity, that proprietorship as I designated, of Mr. and Mrs. Harkness jointly, all being

community property, continued from 1937 until December 31, 1942, when the partnership which the government has questioned here was created, again called the United Packing Company.

The Court: Up to that time they didn't conduct the business as a partnership, but simply on a community property basis?

Mr. Ehrlich: That's right. The proprietorship was run, Mr. Harkness managing the business, the business being [11] owned by Mr. and Mrs. Harkness equally as a result of the community property laws of the State of California.

Mr. Harkness had long realized, having gone through these long gyrations of partnership and percentage and participation deals, that it was essential if this partnership was to prosper and continue that money must remain in the business, and we will show that one of the motivating factors was this idea on his part to bring his family into the deal in order that he might adequately finance himself.

There was also another motivating factor in this deal: the fact that his son who had always lived on the farm—and by the way, the Harknesses from '29 to '39 or thereabouts, the evidence will show the dates, had a farm outside of Fresno, and their son and daughter lived on the farm—so these children, both the son and daughter, who subsequently became members of the partnership, had lived this farming life, and the evidence will also show that the son had worked for a long period of years. This was no new idea just clear out of a clear sky, but the

son had worked for his father during the greater portion of his life when he was not attending school. As a matter of fact, the evidence will show, if your Honor please, during the year 1937 when the father and mother needed his help in the United Packing Company, the son quit school from June, 1937, or thereabouts—the evidence will show the exact dates—until January, 1938, for the sole purpose of [12] helping his father and helping to manage the United Packing activities.

The evidence will also show that the son, after he graduated from college, came in and affiliated himself with the business.

The Court: What year was that?

Mr. Ehrlich: That was in June of '41, as I recall it, your Honor. The boy graduated from Fresno State College and affiliated himself with the partnership, and during the year '41 received a participation of five per cent in the profits of the partnership in addition to a small salary. It was in the summer vacation of '37 that the boy left school and did not return until January, '38, and remained with his father. The period in which they lived on a ranch was from '29 to '39. At the time, in the year '39, the boy was 21 years old.

The evidence will also show—I will have the father and son testify—that they had discussed on many occasions the boy's affiliation with the business, and the evidence will also show that at the time the boy voluntarily gave up his draft deferment and went into the service in January of 1942 that he had on the books of the partnership some

\$1,200 or \$1,300 still due and owing to him as a result of his service which had been rendered to the proprietorship. When I say "proprietorship" I don't want to confuse your [13] Honor; it is Mr. and Mrs. Harkness doing this business. When the son left for the service there was due and owing to him \$1,200 to \$1,300, which reduced the amount of the note which the son gave to the father and mother for participation in the business. The daughter paid, I think, some \$34,000, and the son paid \$34,000, less the credit of the amount due him on the books of the partnership.

The Court: What year were they taken into the partnership?

Mr. Ehrlich: They were taken into the partnership as of January 1, 1943. It was signed during December of '42 while the son and son-in-law were both in the service. Discussions, as I have pointed out, in this particular interest, had not only occurred between the father and son regarding his affiliation with the business, the financial position of the business as the result of the requirements to pay these large bonuses and percentages to strangers, but as to the ability of the business to succeed, and the son and father discussed this question of his participation in the transactions. As a matter of fact, the son asked to participate in 1941 and the father said that his bonus deals were too severe, that he couldn't permit him at that time, although he gave the son at that time a five per cent participation. In these discussions the son kept pressing his father, saying that he wanted to make this his

career, wanted to become identified with it. And [14] naturally, not only was it the business motive that prompted his father, but the parental relationship where the father was desirous of taking the son into the business so that the business which he had developed could be perpetuated.

More or less the same held true after the son-in-law—without going into too much detail in my opening statement—the same state of facts held true with reference to the daughter. The daughter, for example, had worked after she became of age in September of '41 and graduated from college June, '42, worked for three or four months in the father's business. She married in August of '42. Her husband had joined the Army before the draft law had become effective, and he was in the service. But the father and mother and daughter discussed that if the son was to come into the business equal treatment and opportunity should be given to her, and they discussed that. The father said whatever he did for the son, whether it was a loan, whatever participation, how he handled the matter, he would do the same thing for his daughter, the question being, which they discussed at considerable length, whether or not the son-in-law and daughter, or the daughter, should get the opportunity in the United Packing Company or whether she should invest elsewhere whatever her father loaned her or gave her, whatever way the transaction was finalized, whether she should take her interest in the partnership; and they also discussed other investments. [15] Due to the war conditions at that time, and the

trust and confidence she felt in her father's ability, she decided whatever opportunity her father made available to her should be made available in the partnership rather than in outside enterprise. The evidence will disclose there were certain other enterprises that she was thinking of at the time.

It will also disclose that Mr. Colgate, who was not technically a member of this partnership, doesn't become a member until he comes back from the service, had parents of means, and when it came to the question of financing their interest in this partnership, the money could have been available from Mr. Colgate's father, but they decided to borrow the money from Mr. Harkness, Sr., on a note. By the way, this partnership was created effective as of January 1, 1943, and Mr. Harkness, Jr., and Mrs. Colgate, the daughter, gave for their interest in this partnership, which was a 25 per cent interest, each gave a promissory note. The promissory note which Mrs. Colgate gave was signed by her husband, so that he had a tie of liability as well as his wife for the repayment of funds. As the evidence will establish, your Honor, these two notes, both the son's note and the daughter's and son-in-law's note were paid out of the profits, and proper credits; the books of account were kept with meticulous care.

The stipulation would indicate the capital account, the contributions of the partners, the withdrawals, the participations [16] and the salary.

I also want to point out to your Honor this in passing: that the partnership was created on January 1, 1943. The stipulation of facts shows that on

January 4, 1943, four days after the partnership became legally effective, a supplemental agreement was entered into which established the salary of Mr. Harkness, Jr., who was managing the partnership while the boys were away, and Mr. Harkness, Sr., for the years 1943, '44, '45, '46, and '47, as the stipulation establishes, received \$75,000 a year. It was 75 per cent, the stipulation establishes, and the contracts which are in the stipulation, but I say \$75,000 a year because that is the way it was computed; that is the way it came out. It was computed that Mr. Harkness, Sr., would receive 75 per cent of the profits of the first \$100,000, and then the partners came in and participated. It so happened in the five years Mr. Harkness, Sr., has received as salary and it has been credited to him on the books of the partnership, \$75,000 a year, so the question naturally arises: Isn't it a fact that if this partnership was created for tax purposes, Mr. Harkness, Sr., would have taken \$12,000 or \$25,000?

The Court: You are arguing your case now.

Mr. Ehrlich: I am sorry, your Honor.

While I am on this subject I want to state this: In the end of '44, Colgate, the son-in-law, received a medical [17] discharge, came back to Fresno County, and I think the evidence will establish that within a few days after his return to Fresno he became actively engaged in working for the January 1, 1943, partnership, and he received a nominal salary during the year 1944. I think he received some \$400 or \$500—the Wage Stabilization Order was in effect. On January 16, 1945, Mr. Colgate

became technically a member of the partnership, and a supplemental agreement, which is attached to the stipulation, made him a partner in the agreement, although he and his wife still shared the one-quarter interest. As a matter of fact, during the year 1945 he received some \$4,000 or \$5,000.

In '46 young Harkness came back and immediately affiliated himself immediately began working for the partnership, so in the years '46 and '47 they entered into contracts supplementing the original contract whereby the son-in-law and son received very substantial salaries. I think the evidence will show that the salaries which the son received in the year '46 when he came back from the Service and started contributing to the partnership——

The Court: Is that in the stipulation?

Mr. Ehrlich: Yes, your Honor.

The Court: Well, we will get it.

Mr. Ehrlich: But they received in '46 and '47, the two boys received between \$40,000 and \$50,000 each year, and [18] their participation in the profits on the percentage deal, which was the original theory upon which Mr. and Mrs. Harkness brought their son and son-in-law into the business.

In the years '43, '44, '45, '46, and '47 as a result of the percentage deal expressed in the written contracts—and I might emphasize here, your Honor, this partnership has been conducted with meticulous detail both as far as written documents are concerned, legally and accounting-wise—as a result

of these percentage deals, Harkness, Sr., received in 1943 \$75,000; '44, \$75,000; '45, \$75,000; '46, \$75,000; and '47, \$75,000 salary.

The boy was in the service '43, '44, and '45; started devoting his time and his ability to the partnership in '46, and received a salary of \$57,984.75 in '46; and in '47, \$53,635.13. That is all as the result of participations in the profits and not a fixed salary.

Now, the son-in-law, Mr. Colgate, as I pointed out to your Honor, came back in 1944, received \$450 for the few months he worked in '44 as a result of Wage Stabilization. He received \$5,375 in '45; in '46, \$46,554.79; and in '47 he received \$35,928.45. It is interesting to note, if your Honor please, the stipulation indicates that these years in which these three men received for services rendered some \$180,000 or thereabouts, the participation in the partnership for the year '46 was about—I am adding it hastily here—[19] about \$55,000, I mean all the partners received \$55,000 in '46 as their participation, and in '47 about \$83,000. So in those last two years the salaries of the partners far exceeded the participation of the partners in the profits.

The evidence will also disclose, if your Honor please, that at the time Mr. Harkness at the end of '42 started to seriously discuss this matter, that conditions were none too favorable. The stipulation shows that there had been a good year in 1941. However, the war effort had not begun, as your Honor knows, and may take judicial notice, to crystalize sufficiently to affect various activities, and

in and about the middle of August, '42, a number of Orders had been promulgated by the various administrative agencies, the President, War Production Board, and various agencies which had been organized to conduct the war, which created quite a doubt in the minds of Mr. Harkness and his wife as to the future of the business. Without going into that at length, I just want to call to your Honor's attention that there was a great scarcity of labor due to the fact that the Japanese were required to move from the Pacific Coast of California in particular, and labor in the San Joaquin Valley of this type of activity depended to a great extent upon Japanese. Then there was the large starting up of the shipyards and other manufacturing war activities that drained labor. There was priority on freight cars, material priorities affecting shoo, nails, wood. There were government [20] limitation orders with regard to repairs and use of materials. There was a raisin order whereby the government required that grapes be converted into raisins so that the government could stockpile raisins for the European countries. There was a sugar rationing order that affected the situation. Then there was this fact: there was the possibility that grapes which were not a vital commodity as it had been listed by the War Production Board and other agricultural agencies involved, that there was a freight car situation so that the matter was very questionable, the conditions which were facing this partnership.

It is also interesting to note that Mr. and Mrs.

Harkness did not turn over to the partnership all their assets. As of December 31, 1942, they were worth—I will introduce in evidence their balance sheet—\$235,000. The co-partnership started with assets of \$138,000, so that Mr. and Mrs. Harkness had retained in the partnership approximately \$100,000 out of \$250,000 of assets. Their idea was that they wanted to be protected in the event that anything happened to the partnership so that they had some other means. In the assets retained by Mr. and Mrs. Harkness as of January 1, '43, there were several ranches which they felt would be sufficient to support them. We will also introduce in evidence the income from these sources.

The Court: They had unlimited liability, didn't they?

Mr. Ehrlich: Yes, your Honor, as individuals they had [21] unlimited liability, and these assets could have been taken if the partnership had not been successful. But they felt that they wanted to keep those assets for their own use, not let the children participate in those particular assets, which, as the evidence will disclose, were \$50,000 in cash and these ranches.

There is only one other transaction which is contained in the stipulation which I desire to call to your Honor's attention in the opening statement, and that is this, illustrating the drain of outside personnel on the business. They had a man named Sorensen, a very able man in this particular activity. We have an exhibit here that shows as a result of Mr. Sorensen's participation in this business he

insisted that they buy a ranch west of the Harknesses, and they financed a ranch jointly with him. As a result of that joint venture he withdrew in a period of three or four years some \$150,000 in profits, then forced the Harknesses to buy the ranch from him and made a gain of some \$40,000 or \$50,000. This all occurred at the time that he severed relations, and I think the transaction was closed on the same day that young Colgate technically joined the partnership, as I told you, in January of '45. This man Sorensen at that time required the United Packing Company to buy him out of the partnership, and they bought him out. That merely indicates the drain which these outside factors had been on the business. [22]

In closing my opening statement I would like to state to your Honor that we have here the books of the partnership available. The stipulation shows the partnership withdrawals. As I pointed out before, the notes were paid off, this was not a gift, this is a community property partnership, there isn't a question of the wife having been gifted, so that we have a community property partnership originally; we have a sale by the father and mother to their children of this interest with notes, one of the notes being of a lesser amount than the other because of the credit on the books that the son had. We have here the books being kept in the strictest order. We have the capital accounts, there is no inter-family transaction, the profits available, the salaries available, the income tax returns indicate

that they all paid their taxes on their salaries and incomes, there has been no interplay of finances between the children and the father and mother.

We also have these large salaries which I pointed out to you, and I don't want to take the time of the Court, as we will point it out on the brief, but I emphasize it most strongly, and that is this: that these partnership agreements contained restrictions on the power and rights and obligations of the various partners, and particularly there is one provision I won't take the time to read as we will point it out to your Honor in briefs, whereby it required three partners to act on certain matters of vital interest to the partnership so that [23] neither Mr. or Mrs. Harkness could control the situation without any consideration, without giving any consideration to the children.

As a result of these factors which I have tried to skim over as hurriedly as possible so as not to take the time of the Court, I feel that we have a partnership which, if your Honor please, qualifies as a legitimate bona fide partnership for tax purposes, and that the tax returns as returned by the various partners are correct.

Thank you.

The Court: Mr. Mather.

OPENING STATEMENT ON BEHALF OF THE RESPONDENT

By Mr. Mather:

If your Honor please, we think that the evidence in these cases will disclose that the family arrange-

ment for our taxable year was not dissimilar to a similar arrangement which the Supreme Court refused to recognize in the Tower and Lusthaus Cases. The evidence will fail to disclose any new capital came into the business; will fail to disclose that the children performed any service in the taxable year.

The evidence will disclose that the partnership agreement provided that the children weren't to perform any services in the taxable year. We are not much concerned with what went on before our taxable year. The evidence will disclose that this was community property of the Petitioners at the [24] time of this arrangement, our taxable year. Now, what transpired after our taxable year we are not much concerned with. Later the evidence discloses, long past our taxable year, that the son came back and devoted his time to the business. We don't have that question before us. We have the year 1943 at which time the son was in the Army, the daughter never at any time performed any vital services to the business, and we think it is just one of the typical family partnership cases.

The Court: Call your witness.

Do you want to offer your stipulation?

Mr. Ehrlich: Yes. If your Honor please, I have a stipulation in the case of Floyd J. Harkness, Petitioner, versus Commissioner of Internal Revenue, 16408. I would like to offer that in evidence. I have two copies here.

The Court: Is that applicable to both dockets?

Mr. Ehrlich: Yes. We happened to have drafted two separate stipulations.

The Court: The stipulation of fact will be received.

Mr. Ehrlich: I have that in the matter of Molly A. Harkness versus Commissioner of Internal Revenue, Docket No. 16407.

The Court: Are they identical?

Mr. Ehrlich: Yes, your Honor.

The Court: The stipulations of facts will be received.

You may proceed with your testimony. [25]

Mr. Ehrlich: Mr. Mather, I suggested to you this morning that we introduce in evidence the letter of deficiency and mark it 10-J.

Mr. Mather: There is no objection.

(Whereupon the document was marked for identification as Joint Exhibit 10-J.)

The Court: It isn't attached to the petition?

Mr. Ehrlich: It is attached, but I thought for purposes of writing the brief we could refer to it. We have two other exhibits.

Then, Mr. Mather, there is no objection to having Exhibit B in the petition, the partnership agreement of December 31, 1942, marked Exhibit 11-K?

Mr. Mather: No objection.

(Whereupon the document was marked for identification as Joint Exhibit 11-K.)

The Court: Admitted as Exhibit No. 11-K.

(Whereupon the document marked Joint Exhibit 11-K for identification was received.)

[Joint Exhibit 11-K is identical to Exhibit B attached to the Petition.]

Mr. Mather: That is also attached to the petition in each case.

Mr. Ehrlich: Then Exhibit C in the petition in each case is the supplementary agreement, January 3, 1943. That might be marked 12-L.

Mr. Mather: No objection. [26]

(Whereupon the document was marked for identification as Joint Exhibit 12-L.)

The Court: That may be admitted.

(Whereupon the document marked Joint Exhibit 12-L for identification was received.)

[Joint Exhibit 12-L is identical to Exhibit C attached to the Petition.]

The Court: Is one of those exhibits the notice of deficiency?

Mr. Ehrlich: Yes, Exhibit 10-J.

The Court: I don't think we got that straight in the record. Do you want to offer that?

Mr. Ehrlich: Yes, your Honor.

The Court: Exhibit 10-J is admitted.

(Whereupon the document marked Joint Exhibit 10-J for identification was received.)

[Joint Exhibit 10-J is identical to Exhibit A attached to the Petition.]

Mr. Ehrlich: 11-K is the partnership, December 31, '42; and 12-L is the supplementary agreement of

January 3, '43, all of which are part of the petition, your Honor.

Thank you.

Mr. Harkness, will you take the stand?

Whereupon

FLOYD J. HARKNESS

was called as a witness on behalf of the Petitioners, and having been first duly sworn, testified as follows:

The Clerk: State your name and address, please.

The Witness: Floyd J. Harkness, Fresno, California.

Direct Examination

By Mr. Ehrlich:

Q. You are the Petitioner in the case of Floyd J. Harkness versus the Commissioner? A. I am.

Q. And you reside in Fresno and have resided there all your life? A. I have.

Q. How old are you, Mr. Harkness. A. 56.

Q. Molly A. Harkness is your wife.

A. That is right.

Q. She is the Petitioner in the case of Molly A. Harkness versus the Commissioner of Internal Revenue? A. That's right.

Q. Were you and Mrs. Harkness married on July 14, 1915? A. We were.

Q. And you have resided in California continuously since? A. We have.

Q. You have two children, Floyd James Harkness and Harriet Harkness Colgate?

A. We have.

(Testimony of Floyd J. Harkness.)

Q. Have you any other children?

A. We have none.

Q. How old is your son, Floyd, Jr.? [28]

A. He was born in 1918.

Q. And your daughter?

A. Born in 1920.

Q. Your daughter is married to William Colgate?
A. She is.

Q. When was she married?

A. In August, 1942.

Q. How long have you known your son-in-law?

A. Eight or nine years.

Q. Where does your son now reside?

A. In Sanger, Fresno County, California.

Q. Your son?

A. My son resides in the City of Fresno.

Q. And your daughter?

A. My daughter resides in Sanger, California.

Q. That is near Fresno?

A. Yes, that is 16 miles east of Fresno.

Q. What is your business or occupation?

A. Grower and shipper of fruits and vegetables.

Q. How long have you been engaged in this activity?
A. Since 1918, including 1918.

Q. Mr. Harkness, will you briefly outline your farming activities and your activities as a buyer and seller of farm commodities just briefly so the Court may have the background? [29]

A. Well, we raise some commodities ourselves. We buy some commodities from the grower on a cash basis. We handle considerable tonnage on a

(Testimony of Floyd J. Harkness.)

commission basis for the grower's account. That applies to canteloupes, carrots, peaches, plums, nectarines, grapes, both table grapes and juice grapes.

Mr. Ehrlich: Mr. Mather, I assume it will be unnecessary to identify all these original contracts. They have all been in the stipulation so it will be unnecessary to show the handwriting.

Mr. Mather: They are all stipulated.

Q. (By Mr. Ehrlich): You are the Mr. Harkness who is mentioned in the partnership agreement which was signed by you, your wife, your son, and your daughter which was effective December 31, 1942; is that correct?

A. I am designated as Floyd J. Harkness in there. My son is designated as Floyd J. Harkness, Jr.

Q. And your daughter is designated as Harriet Harkness Colgate?

A. That's right.

Q. And your wife as Molly?

A. Molly A. Harkness.

Q. Mr. Harkness, will you please relate to the Court just when you organized the first co-partnership in the fruit packing business? [30]

A. Well, the first co-partnership was organized in 1923. I had working arrangements with other fruit companies on a salary and bonus percentage basis prior to that date, but the actual filing of a certificate of doing business under fictitious title and operating as such was in 1923. There were three partners in that deal, H. H. Wilhelm of Di-

(Testimony of Floyd J. Harkness.)

nuba, California, Charles H. Jasper of Fresno, California, and myself.

That three-way partnership continued for a period of one year. Mr. Wilhelm didn't get along with Mr. Jasper and myself and saw fit to withdraw at the end of the first year.

Mr. Jasper and myself continued to operate as a partnership until the end of 1936. Mr. Jasper was some 18 years older than myself, and he was at that age in life when he was afraid to take chances. The fruit business had turned to where a man either had to take chances or just get out of the business.

We had very little capital. Our joint capital at the end of 1936 was slightly in excess of \$6,000 in cash. We owned two ranches together, a 160-acre vineyard and a 40-acre vineyard and orchard. We had packing houses at that time at Lodi, California; Clovis, California; Sanger, California; Exeter, California; Arvin, California.

In appraisal of our assets, neither one of us had sufficient money to buy out the other party, so it was a proposition of trading. The consummation of that trade was that I took over the packing houses and the picking boxes and equipment, etc., and Mr. Jasper took over the two ranches. Each one of us took half of the bank balance which we had, as I stated, approximately \$6,000. I took \$3,300, I believe it was, and he took an equal amount.

Q. When did you commence operating as a pro-

(Testimony of Floyd J. Harkness.)

prietorship under the name "United Packing Co." with yourself and your wife, approximately?

A. January, 1937.

Q. And you continued how long?

A. I continued to operate as a proprietorship or individual until December 31, 1942.

Q. What occurred on December 31, 1942?

A. I sold an interest in a part of my assets to my son Floyd J. Harkness, Jr., and Harriet Harkness Colgate, my daughter.

Q. At that time where were you operating prior to the consummation of the partnership?

A. Our main office was at Fresno, California.

Q. I will show you a map. Does this map indicate the scope of the activities which you were undertaking at that time?

A. It does. [32]

Q. Does it also show the commodities which you were engaged in buying and selling?

A. Yes, by districts.

Q. What was the relative distance that your activities comprehended?

A. Well, Arvin was 127 miles south of Fresno and Lodi was 138 miles north of Fresno.

Mr. Ehrlich: I ask that be introduced in evidence.

Mr. Mather: No objection.

The Court: Admitted as Petitioner's Exhibit 13.

(Whereupon the document marked Petitioner's Exhibit 13 for identification was received.)

PETITIONER'S EXHIBIT NO. 13

(Admitted January 11, 1949.)

[Petitioner's Exhibit No. 13, a map of California, is in the custody of the Clerk of the Court of Appeals for the Ninth Circuit.]

(Testimony of Floyd J. Harkness.)

Q. (By Mr. Ehrlich): At the time that this partnership was created, you and your wife had certain community property, did you not?

A. We did.

Q. I am showing you a statement. To save time, might I explain this, Mr. Mather: I have prepared here a statement showing the assets and liabilities of United Packing Company, a co-partnership, as of the date 12/31/42; then the assets which were turned over to the partnership as of 1/1/43; then the personal property of Mr. and Mrs. Harkness.

I show you this document and ask you if I have correctly described it.

A. Yes, you have. [33]

Q. Was that prepared under your direction and control?

A. It was.

Q. It accurately reflects your books and records?

A. Yes, sir.

Mr. Ehrlich: I ask that that be marked Petitioners' next in order and offer it in evidence, as petitioners' next in order.

(Whereupon the document was marked for identification as Petitioners' Exhibit 14.)

Mr. Mather: No objection.

The Court: Admitted as Petitioners' Exhibit 14.

(Whereupon the document marked Petitioners' Exhibit 14 for identification was received.)

PETITIONER'S EXHIBIT No. 14

Assets:	Assets & Liabilities United Packing Co. Proprietorship 12/31/42	Assets & Liabilities Co-Partnership 1/1/43	Assets & Liabilities Molly A. Harkness & F. J. Harkness Personal 1/1/43
Cash (On deposit Bank of America, Fresno Main Branch)	150,609.48	100,000.00	50,609.48
Paid up life insurance	1,901.24		1,901.24
U.S. War Bonds	1,875.00		1,875.00
Real Estate	18,287.60		18,287.60
Home Place (New 1939)			
40 Acres Selma	18,233.34		
Reserve for depreciation	982.87	17,250.47	17,250.47
90 Acres Selma	23,857.19		
Reserve for depreciation	1,792.71	22,064.48	22,064.48
Packing site (Parlier)		1,500.00	
Packing sheds Arvin, Clovis, Exeter, Lodi & Sanger	21,615.15		
Reserve for depreciation	15,966.41	5,648.74	5,648.74
Registered Brands	1,230.00	1,230.00	

Equipment			
Autos and Trucks	9,025.96		
Reserve for depreciation	2,925.58	6,100.38	6,100.38
Office	2,354.03		
Reserve for depreciation	1,293.03	1,061.00	1,061.00
Farm (including 3 tractors)	6,790.21		
Reserve for depreciation	2,895.07	3,895.14	2,689.85
			1,205.29
Packing House	12,288.81		
Reserve for depreciation	8,976.86	3,311.95	3,311.95
Picking boxes		6,182.60	6,182.60
Packing materials		6,473.31	6,473.31
Japanese Picking Camps		428.77	428.77
Accounts Receivable		7,829.03	7,594.03
			235.00
Liabilities:			
Reserve for taxes, insurance, etc.		—3,959.02	—3,959.02
Unpaid balance Selma Ranch #1		—7,350.00	—7,350.00
Unpaid balance Selma Ranch #2		—8,327.18	—8,327.18
F. James Harkness, Jr.		—1,412.05	—1,392.05
Net Worth	234,600.94	138,241.61	96,359.33

Admitted January 11, 1949.

(Testimony of Floyd J. Harkness.)

Q. (By Mr. Ehrlich): On January 1, 1943, did the partnership now consisting of your wife and your son, your daughter and yourself continue in the same activity? A. We did.

Mr. Ehrlich: By the way, I have here the original certificate of co-partnership of transacting business under fictitious name, and I have made a copy. Is there any objection if I introduce in evidence, Mr. Mather, a copy of that?

Mr. Mather: No objection.

Mr. Ehrlich: I would like to introduce at this time the certificate of co-partnership of transacting business under [34] fictitious name.

(Whereupon the document was marked for identification as Petitioners' Exhibit 15.)

The Court: Is the original certified?

Mr. Ehrlich: It is notarized, yes, your Honor. I haven't had this certified.

The Court: That is all right. I thought you had a certificate from some official.

Mr. Ehrlich: Yes, we have a system in California when doing business under a fictitious name that you file this as a co-partnership, it has to be notarized before a notary public of California.

The Court: You can offer a copy. I understand there is no objection to the copy.

Mr. Ehrlich: I would also like to have it appear in evidence. I offer it in evidence as Petitioners' next in order.

The Court: Admitted as Petitioners' Exhibit 15.

(Testimony of Floyd J. Harkness.)

(Whereupon the document marked Petitioners' Exhibit 15 for identification was received.)

PETITIONERS' EXHIBIT No. 15

Certificate of Co-Partnership Transacting
Business Under Fictitious Name

We, the undersigned, hereby certify that we are co-partners engaged in and carrying on a general business of growing, packing, shipping and the distribution of fresh fruits and vegetables in the State of California, under the firm name and style of "United Packing Co.":

That the principal place of said co-partnership is at 216 Rowell Building, Fresno, California.

That Floyd J. Harkness is the general manager of said company and in full charge of all of the business operations of said company.

That the names in full of all of said co-partners and their respective places of residence are as follows, to-wit:

Floyd J. Harkness, residing at 3767 Huntington Boulevard, Fresno, California.

Molly A. Harkness, residing at 3767 Huntington Boulevard, Fresno, California.

Floyd James Harkness, Jr., residing at 3767 Huntington Boulevard, Fresno, California.

Harriet Harkness Colgate, residing at 59 South Champion Street, Columbus, Ohio.

(Testimony of Floyd J. Harkness.)

In Witness Whereof, we have hereunto set our hands this 12th day of November, 1942.

FLOYD J. HARKNESS.

MOLLY A. HARKNESS.

FLOYD JAMES HARKNESS, JR.

HARRIET HARKNESS
COLGATE.

State of California,
County of Fresno—ss.

On this 12th day of November, 1942, before me, Julius Hansen, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared, Floyd J. Harkness, Molly A. Harkness and Floyd James Harkness, Jr., known to me to be the persons described in, whose names are subscribed to and who executed the within instrument and acknowledged that they executed the same.

In Witness Whereof I have hereunto set my hand and affixed my official seal at my office in said County the day and year in this Certificate first above written.

JULIUS HANSEN,
Notary Public in and for the County of Fresno,
State of California.

(Testimony of Floyd J. Harkness.)

State of Ohio,
County of Franklin—ss.

On this 28th day of November, 1942, before me, N. R. Hall, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Harriet Harkness Colgate, known to me to be the person described in, whose name is subscribed to and who executed the within instrument and acknowledged that she executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in said County the day and year in this Certificate first above written.

N. R. HALL,
Notary Public in and for the County of Franklin,
State of Ohio.

Admitted January 11, 1949.

Mr. Ehrlich: It appears that on this document I neglected to put the face on. If I may read into the record, it is dated November 12, 1942, recorded at the request of United Packing Company 10 minutes past 3:00 p.m., Volume 2054, Official Records P. Q. 478 et seq, February 4, 1943, Fresno, [35] County, California, I. E. Farley, County Recorder, by Deputy Recorder.

Q. (By Mr. Ehrlich): Mr. Harkness, at the

(Testimony of Floyd J. Harkness.)

time you sold the interest in the partnership to your children, did you receive promissory notes from them? A. I did.

Q. I show you a document. Will you please explain what that is?

I might do it to save time. Is there any objection, Mr. Mather?

Mr. Mather: No objection.

Mr. Ehrlich: I have before me the original note which Floyd J. Harkness, Jr., gave to his father in the sum of \$33,168.36, dated January 2, 1943.

Q. (By Mr. Ehrlich): Is that the note that your son gave you? A. It is.

Mr. Ehrlich: I ask that that be introduced in evidence.

(Whereupon the document was marked for identification as Petitioners' Exhibit 16.)

Mr. Mather: No objection.

The Court: That will be Petitioners' Exhibit 16.

(Whereupon the document marked Petitioners' Exhibit 16 for identification was received.)

[36]

PETITIONERS' EXHIBIT No. 16

Fresno, California, January 2, 1943.

\$33,168.35

On demand, after date, for value received, I promise to pay to Floyd J. Harkness, or order, at Fresno, California, the sum of Thirty-Three Thou-

(Testimony of Floyd J. Harkness.)

sand, One Hundred Sixty-Eight and 35/100 Dollars, with interest from date hereof until paid, at the rate of 4 per cent per annum payable annually, also to pay a reasonable attorneys' fee and costs of suit in case suit is brought to compel payment hereof.

Should interest not be so paid it shall become part of the principal and thereafter bear like interest. Should default be made in payment of interest when due, the whole sum of principal and interest shall, at the option of the holder of this note become immediately due. Principal and interest payable in United States lawful money. This note is secured by my one-fourth interest in the United Packing Co. of Fresno, California.

FLOYD J. HARKNESS, JR.

Paid in full 12/31/43.

F. J. HARKNESS.

Admitted January 11, 1949.

Mr. Ehrlich: May I substitute a copy?

The Court: You may substitute a copy if there is no objection.

Mr. Ehrlich: Thank you, your Honor.

The Court: Do you have the ribbon copies of that for the record?

Mr. Ehrlich: Yes.

I have now in my hand a promissory note signed

(Testimony of Floyd J. Harkness.)

by Harriet Harkness Colgate and William H. Colgate, Jr., dated January 2, 1943, in the sum of \$34,560.40.

Q. (By Mr. Ehrlich): Is that the note that your daughter and son-in-law gave you and your wife in payment on the interest in the partnership?

A. It is.

Mr. Ehrlich: I ask that that be introduced as Petitioners' next in order.

(Whereupon the document was marked for identification as Petitioners' Exhibit 17.)

The Court: Admitted as Petitioners' Exhibit 17.

(Whereupon the document marked Petitioners' Exhibit 17 for identification was received.)

PETITIONERS' EXHIBIT No, 17

Fresno, California, January 2, 1943

\$34,560.40

On demand, after date, for value received, I promise to pay to Floyd J. Harkness, or order, at Fresno, California, the sum of Thirty-Four Thousand, Five Hundred Sixty and 40/100 Dollars, with interest from date hereof until paid, at the rate of 4 per cent per annum payable annually, also to pay a reasonable attorney's fee and costs of suit in case suit is brought to compel payment hereof.

Should interest not be so paid it shall become part of the principal and thereafter bear like in-

(Testimony of Floyd J. Harkness.)

terest. Should default be made in payment of interest when due, the whole sum of principal and interest shall, at the option of the holder of this note become immediately due. Principal and interest payable in United States lawful money. This note is secured by my one-fourth interest in the United Packing Co. of Fresno, California.

HARRIET HARKNESS
COLGATE.

WILLIAM H. COLGATE, JR.

Paid in full 12/31/43.

F. J. HARKNESS.

Admitted January 11, 1949.

Mr. Ehrlich: And may I be permitted to substitute a copy?

The Court: You may substitute a copy for the original. [37]

Mr. Ehrlich: For your Honor's information, there appears on the face of the note "Paid in full 12/31/43, Floyd J. Harkness," on both notes.

The Court: Does that appear on the copies also?

Mr. Ehrlich: Yes, that is on the copy, your Honor. Thank you.

In order to expedite matters, I have in my hand a statement, a sheet of paper which is the income of Floyd J. Harkness and Molly A. Harkness from

(Testimony of Floyd J. Harkness.)

community property not included in capital and assets of United Packing Company, a co-partnership, for the years 1943 to '47. It shows what individual incomes they had other than what was turned over to the partnership.

Q. (By Mr. Ehrlich): Was that prepared from the books and records of the corporation, showing you this document? A. It was.

Mr. Ehrlich: I would like to introduce this in evidence, if your Honor please.

(Whereupon the document was marked for identification as Petitioners' Exhibit 18.)

Mr. Mather: If your Honor please, I have no objection to the document except for the years not involving our taxable year, which are '44, '45, '46, and '47. I will object to that as immaterial. I have no objection to '43. [38]

The Court: Are you confining it to '43 then?

Mr. Ehrlich: Let me first ask that—may I read into the record, I make this offer in two parts. The books and records of Floyd J. Harkness and Molly A. Harkness indicate that their income from community property not included in the capital assets of United Packing Company, a co-partnership, for the year 1943, was \$11,426.76.

Mr. Mather: I have no objection to that.

Mr. Ehrlich: I make the offer of the other years, 1944, '45, '46, and '47.

The Court: What is the purpose of the additional offer?

(Testimony of Floyd J. Harkness.)

Mr. Ehrlich: Merely to show that during the years there were no gifts made and that the father and mother retained these other properties, and that they did not at any subsequent date turn over to the family property, to show the atmosphere and surrounding circumstances and bona fides as bearing on our theory.

The Court: That wouldn't show that, would it?

Mr. Ehrlich: I thought it was relevant testimony.

The Court: It just shows they had certain income aside from that received through the partnership.

Mr. Ehrlich: That is correct, your Honor.

Mr. Mather: I might explain my objection a little further. I understand that the subsequent years are pending [39] before the Bureau, and I haven't checked these figures for subsequent years and I wouldn't want them in the record without objection. I don't dispute that your books show that.

Mr. Ehrlich: We have them here if there is any question about it.

The Court: I will overrule the objection. It may be admitted as Petitioners' Exhibit 18.

(Whereupon the document marked Petitioners' Exhibit 18 for identification was received.)

(Testimony of Floyd J. Harkness.)

PETITIONERS' EXHIBIT No. 18

Income of Floyd J. Harkness and Molly A. Harkness From Community Property Not Included in Capital and Assets of United Packing Co., a Co-Partnership

Year	
1943	\$11,426.76
1944	18,347.22
1945	4,492.07
1946	47,862.32
1947	12,960.60

Admitted January 11, 1949.

Q. (By Mr. Ehrlich): Mr. Harkness, when did your son first start working for you? I am not talking about the partnership now of January 1, '43, but when did he first start working for you?

A. His first activity in the fruit business was during the period of my partnership with Mr. Jasper.

Q. How old was he at that time, about?

A. Well, I don't recall the exact year that he started, but I do know that he worked on Mr. Jasper's and my ranches as well as worked in the packing houses on various occasions, summer vacations. Usually in California the school vacation is the busiest part of the packing season, June, July, and August.

(Testimony of Floyd J. Harkness.)

Q. That is the height of the season?

A. That's right.

Q. And he worked off and on when you and Mr. Jasper were [40] partners from 1924 to '37 or thereabouts?

A. No, not as far back as 1924. I would judge that he was of high school age when he first started.

Q. Did he at any time definitely work for you after you severed your relations with Mr. Jasper?

A. He did. He worked, continued to work, and he ran several districts for me.

Q. When was that? When did he actively identify himself with your activities? A. 1937.

Q. Will you please explain that to the Court?

A. I partially explained that before, Mr. Ehrlich, but as I stated, Mr. Jasper and I divided up. I took the operation end of the partnership and some \$3,300 in cash. Frankly, I didn't have the money to operate the packing houses I had taken in trade, and I wasn't too good a risk for the banks at that time, so I had to skimp by. My son stayed out of college the whole fall of 1937, which is the shipping season of our business, and devoted his entire time to the activity of the United Packing Company. He resumed his college attendance in February of 1938 and continued on until the summer vacation of 1938, when he again worked for me.

Q. Did he work for you in the summer of '39?

A. He did.

Q. '40? [41] A. He did.

Q. When did he graduate from college?

(Testimony of Floyd J. Harkness.)

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Q. Did he work for you in the summer of '39?

A. He did.

Q. '40? [41] A. He did.

Q. When did he graduate from college?

(Testimony of Floyd J. Harkness.)

A. June in 1941.

Q. What did he do when he graduated from college?

A. He immediately went to work for United Packing Company.

Q. When you say "United Packing" you mean the business conducted——

A. By Mrs. Harkness and myself.

Q. United Packing Company proprietorship. What compensation did you pay him for his services during '41?

A. 1941 he got the regular field man's wages of \$150 a month, and while I had one field man that was getting 25 per cent of the net profits I reasoned with my son that I couldn't afford to pay him any such percentage, there would be nothing left for myself. So we settled on a basis of five per cent.

Q. So during '41 your son got the regular field man's salary and five per cent of the profits?

A. Yes. I might add he wanted at that time to become interested in the business, but I explained to him that there were so many already associated in the business on a high percentage basis that I couldn't take him in at that time, but I would give him a definite promise that I would make room for him before the 1942 season rolled around.

Q. By the way, would you explain to the Court the quality [42] of personnel that is required for an operation such as you have so the Court will

(Testimony of Floyd J. Harkness.)

understand the bonus and percentage deals that you had as shown in the stipulation?

A. Well, the fruit business is highly specialized. All the commodities we handle are perishable in nature. Their value is determined by the edibility, the eating quality; their price is also predicated on their general appearance. Our shipments of our commodities are to the 48 states of the Union. Prior to the war we exported principally grapes to the South Pacific, Australia, India, to Europe, and a person really had to know quality from the consuming public's viewpoint, and he had to know grapes and fruit—we handled a lot of peaches and nectarines that would carry by freight, which is from five to eleven days in transit, and arrive at destination in a satisfactory condition to enable us to get a reasonable price for the fruit.

The Court: Do you refrigerate your cars?

The Witness: Yes, sir. Some of our shipments are by Railway Express in refrigerated cars. Mostly they are in railroad freight cars, refrigerated cars.

Mr. Ehrlich: If your Honor please, I will take the time of the Court at this time, and without taking Mr. Harkness' time, your Honor, we have attached to the stipulation a list of the bonuses paid and percentages paid to various employees.

The Court: It is in the stipulation? [43]

Mr. Ehrlich: In the stipulation. There is a great deal covered in the stipulation, your Honor, so it may appear that we have gaps here, but I think when your Honor examines the stipulation you will

(Testimony of Floyd J. Harkness.)

find a great deal of the matter is covered by the stipulation here. I just wanted to explain that.

Q. (By Mr. Ehrlich): How long did your son continue working for you during '41, all year '41?

A. From June—well, he graduated, I think, on a Thursday, and went to work on Friday. We were actually shipping plums on the day he graduated, so it was necessary for him to go to work at once.

Q. And he continued with you until when?

A. Until he enlisted in the Army, shortly after Pearl Harbor.

Q. At the time he enlisted in the Army he had a draft deferment as essential?

A. Yes, he had received two deferments, one to complete his college education, and then immediately they gave him an exemption on account of his agricultural activities.

Q. Isn't it a fact that just prior to Pearl Harbor he had received another deferment because of his activities with your business?

A. I think that is so.

Q. And that he waived that deferment and enlisted in [44] January of '41?

A. January, '42, he enlisted.

Q. Excuse me, January, '42? A. Yes.

Q. When did he return to Fresno?

A. The first week of January, 1946. I don't know whether it was the 4th or 5th.

Q. And he has continued working for you since his return from the Army, is that correct?

(Testimony of Floyd J. Harkness.)

A. He has.

Q. Now, with reference to your son-in-law—by the way, your son-in-law enlisted in the service, didn't he?

A. He volunteered to go with the very first contingent of draftees that left Fresno, with this thought in mind—this he told me, so it is not hearsay: the draftees were expected to serve one year; that was before Pearl Harbor, military training of one year, and he was anxious to serve his one year and get out and get into business for himself.

Q. When did he return from the service?

A. About the 1st of October, 1944.

Q. When did he commence working for you?

A. Within the next two or three days.

Q. And he has been working for you ever since?

A. Yes, sir, continuously.

Q. And he became a member of the partnership as appears [45] from the contracts on January 1, 1945, is that correct?

A. He was permitted to become an active participant in the partnership.

The Court: Let's see, did he and his wife, Petitioner's daughter, split the 25 per cent interest that she had previously?

The Witness: Yes, sir, that's right.

Mr. Ehrlich: That appears under one of the exhibits in the case, your Honor, the supplemental agreement to the partnership dated January 16, 1945.

(Testimony of Floyd J. Harkness.)

The Court: All right.

Q. (By Mr. Ehrlich): Will you please relate the conversation had with your son with respect to the formation of the partnership of January 1, 1943?

A. Well, at the time that I made the arrangements with him for 1941, that is, just after he got out of college, he wanted at that time to become a partner, and as I explained to him, I was already burdened with a Mr. Steiger who was getting 25 per cent of my profits, Mr. Sorensen who was getting 25 per cent of my profits, Mr. Scoggins who was getting a salary and 10 per cent, and I think I had two or three others on a salary and bonus basis, so that I just couldn't afford, with the load already contracted for, high percentage men, to take on any further obligation; but I would go along with him on a salary plus five per cent basis in 1941. He accepted that with reluctance, but I promised him that I would somehow change my affairs so that he could become a partner before the 1942 season rolled around.

Q. Continue then, what occurred during 1942?

The Court: You used that word "Partner." You mean in the sense of participating in the profits, or a real technical partnership?

The Witness: With my son?

The Court: Yes.

The Witness: I was going to take him in as a partner. That had been discussed ever since he was of high school age.

(Testimony of Floyd J. Harkness.)

With the other parties operating with me on high percentage basis, I had to guarantee them not only a salary of a minimum amount they would earn, but I had two cases where I gave them 25 per cent of the net profits of the business.

The Court: That was their compensation; it was your business, they were not partners?

The Witness: That's right. In the case of Mr. Sorensen where we financed the purchase of a ranch, 50 per cent interest to an employee to hold him in the business, that was a true partnership; he had an undivided one-half interest in a 300-acre vineyard and orchard. [47]

The Court: That was outside of this partnership we have before us?

The Witness: No, that is tied in with this partnership.

Q. (By Mr. Ehrlich): Continue the conversations with your son regarding the formation of the partnership.

A. Well, as everyone knows, December 7, 1941, the Pearl Harbor incident occurred. Congress immediately declared war. At that time there was so much going on my son said, "Let's forget the business for the minute. I am going to enlist."

He was anxious to get into the Air Corps, and he enlisted and went with a contingent from Fresno about the middle of January, 1942, to Shepherd Field, Texas. But for the year 1942 he was stationed first in one place, then in another, and continuously in his letters to me he wanted to know

(Testimony of Floyd J. Harkness.)

whether it couldn't be arranged. He had been told that we were allowed to continue payment of his wages by the Wage Stabilization Board, and he saw no reason why we couldn't go ahead with our original partnership arrangement.

During that time he was stationed in Texas and Colorado and Presque Isle, Maine, and he went to Officers Training School at Miami, Florida, was commissioned a lieutenant in October of 1942. [48]

He stopped off in Fresno en route under orders to Hamilton Field, Marin County, California, and at that time with legal advice, as I have stated, we formed the partnership, when he was traveling under orders, and stopped over in Fresno.

For a period after the partnership was formed, he was stationed at Hamilton Field until the 22nd or 23rd of December, 1943, when he was flown to India. During that period of a year that he was stationed at Hamilton Field, he was home practically every other week-end, and we carried on the business there with him nearby and correspondence with my daughter and son-in-law who were stationed in Columbus, Ohio, most of the time, part of the time at Camp Lee, Virginia.

Q. It was during the fall, then, of '42 that these discussions occurred with your son with reference to the formation of the partnership, and the partnership was formed prior to his leaving for India?

A. Yes, sir. The actual formation of the partnership was while he was stationed at Hamilton Field, California.

(Testimony of Floyd J. Harkness.)

Q. You had some discussions with your daughter, did you not, and your son-in-law, respecting the formation of this partnership? A. Well——

Q. You can answer that “Yes” or “No.”

A. Yes. [49]

Q. Will you please describe to the Court the period during which these conversations occurred and what these conversations were regarding the formation of the partnership?

A. When my daughter learned in 1941, while she was still attending college—she came home practically every other week-end from Los Angeles; she attended the University of Southern California—she learned that I had promised to sell my son an interest in the business, and immediately she put in a bid for something for herself. We discussed all angles of it, pro and con, and she was then expecting to marry Mr. Colgate, whether she thought they could get along with the old folks and Jim in a partnership.

Q. Who is “Jim”?

A. “Jim” is Floyd James Harkness, Jr. I suggested to her perhaps that if I was going to help her get established in life, loan her some money, it would be better for her to buy some of the di Giorgio Fruit Company stock which then was very low.

After a lot of consideration and the event of war before the partnership was actually consummated—she traveled all over the East with her husband from one Army camp to another. He was then at

(Testimony of Floyd J. Harkness.)

the time of their marriage a lieutenant, became a captain, a graduate of the Staff and Command School at Fort Leavenworth, Kansas—they decided that rather than investing with an outside interest that they would be safer to invest [50] in the United Packing Company which she had been familiar with from the time she was able to understand what people were talking about.

Q. You had legal counsel draft the partnership agreement which has been introduced in evidence here? A. Yes, sir.

Q. When I say “partnership agreement” I am talking of the original January 1, 1943, document.

A. Attorney Julius Hansen.

Q. Your daughter was then located in Ohio with her husband at some training camp there?

A. Yes, Columbus, Ohio.

Q. Did you send the document on for signature?

A. I did.

Q. Was it signed?

A. No, it was sent back.

Q. Unsigned? A. Yes, by her.

Q. Your daughter did not sign the document at the time?

A. No, not the original document.

Q. The original you sent back? A. Yes.

Q. And she sent it back to you?

A. Yes, sir.

Q. Did you send any other documents on or did you go [51] yourself to Columbus, Ohio?

A. No. Several letters were exchanged, and in

(Testimony of Floyd J. Harkness.)

January, 1943, I attended the United Fresh Fruit and Vegetable Association in Chicago with Mrs. Harkness accompanying me. We went down to Columbus after the completion of the convention and discussed the situation with her.

Q. Did she refuse to sign? Did she tell you why she refused to sign?

A. She thought inasmuch as her husband was going to participate in there, she didn't think I should have so much to say about the management of it.

Q. As a result of the discussions—did your son participate in those discussions as well, or not?

A. He was in California and participated in them, yes.

Q. As a result of your discussions with your daughter, did you change the form of the partnership agreement? A. We did.

Q. Were they then sent on to your daughter for signature? A. Yes, they were.

Q. And your daughter ultimately signed?

A. I think it was in March of 1943.

Q. But she did require before she signed that the provisions respecting your rights of management be modified? A. That's right. [52]

Q. Now, Mr. Harkness, there is attached to the stipulation here certain exhibits, 4-D and 5-E.

If your Honor please, these exhibits show the participation of Mr. Sorensen and the various bonuses and percentage deals, just so that your

(Testimony of Floyd J. Harkness.)

Honor may be familiar to understand the next question I am asking. As a matter of interest to your Honor, Mr. Sorensen, one of the men Mr. Harkness testified helped him to run the company, received in '43, '44, '45, and '46 from this ranch which Mr. Harkness voluntarily paid for and gave him a half interest in, taking his note for it, he received in profits from that operation \$144,310.26, and then forced the Harknesses to buy that back. The partnership bought it back and he made a capital gain of \$42,354.70, which is all part of the compensation Mr. Harkness had to pay Sorensen for his services to the partnership. It shows without going into detail these other payments over this entire period of time since Mr. and Mrs. Harkness organized and ran this proprietorship right to the present time, continuing to where the children participated.

Now, Mr. Harkness, I would like to ask you what effect, if any, did the percentage and bonus deals which I have just called to your attention, have on your business?

A. Well, they drained the capital. Even though the figures show that the United Packing Company had made nice profits, sizeable profits, prior to the war, and even during [53] the first part of the war there—no, the partnership was formed just at the outbreak of the war—the treasury or the funds left to operate the succeeding season was really very small compared with the profits I made due to the fact that it paid Steiger 25 per cent and Sorensen 25 per cent and 50 per cent of a ranch that we

(Testimony of Floyd J. Harkness.)

financed him with, so there was just nothing left for the business, it couldn't enlarge. Had they had one bad operating year they would have become insolvent.

In that respect I want to say that it is not uncommon in the fruit business. My first venture was with the Setchel Fruit Company in 1918, '19 and '20. That was during the period of the first World War. Mr. Setchel went into bankruptcy.

I worked with the Associated Fruit Company, ran their entire shipping operations in the State of California. They had other operations, you know, in Wenatchee and Yakima and Florida; however, I was just connected with the California operations. I got out of there just before they went bankrupt.

And we had competitors. E. Y. Foley Company went broke just after World War I. H. V. Rudy, the Fresno Fruit Growers, went broke. The old-time commission houses, Producers Fruit Company, the Pioneer Fruit Company, with headquarters in San Francisco and Sacramento, and Stewart Fruit Company, with headquarters in Sacramento, went broke during that period, all because they didn't have the funds to keep afloat, and the risks that they took during the war period.

Q. Isn't it also true that these men after they left your employ became competitors of yours, made it more difficult for you to engage in business, you trained most of these men who received these bonuses?

A. Yes, I did. Mr. Sorensen was a tenant

(Testimony of Floyd J. Harkness.)

farmer when I first employed him under the Jasper-Harkness period as a field man, and he made good.

Another case is Mr. E. L. Barr, Sanger, California. He served under the Jasper and Harkness period. He has been a very successful competitor of mine and perhaps made considerable more money than I have. He has been in business for himself for the past 15 years or 12 years.

Q. Will you explain to the Court where the need for capital exists in the business?

A. Well, the first need of capital, if you weren't a rancher at all, would be to take care of the growers' financial needs. We have been through a lot of periods when the grower couldn't get his finances from the bank, and competition from the fruit business from these so-called large fruit companies has made loans readily available to these growers that are a shaky risk, and as long as I was in competition with them I either must pass up that desirable tonnage to be [55] secured from the farmers or I must arrange to finance it. And I must contract for the purchase of boxing materials, nails, prior to the commencement of the season. Some years there is a shortage of box shook and we start taking it in January. The value of box lumber has gone up from \$800 or \$900 in pre-war days to \$3,000, \$3,500 a car now. Nails that we used to pay \$2.50 a keg for are now \$11 and \$12 a keg. All our supplies have raised in proportion, so our need for capital is more apparent in the last few years than it was in the old days.

(Testimony of Floyd J. Harkness.)

We are in the ranching deal now quite heavily as a partnership because there are certain varieties of grapes that were necessary, and tree fruit to round out our commercial pack. True, we could go out and get one or two or a dozen growers' crops of Thompson Seedless, for instance, white seedless variety, very popular; but the trend of affairs has been that my competitors have been able to supply red grapes in mixed cars, that is, half a car of red grapes and half a car of white grapes, and they were getting all the business. There wasn't sufficient supply of Red Malaga grapes available to purchase, let alone secure on commission; so in the past four or five years we have planted a considerable acreage of Red Malaga grapes to enable us to round out our otherwise commercial pack of Thompson Seedless.

One of the prime motives in buying the so-called River Ranch in conjunction with Sorensen was without that particular plum crop we did not have enough plums available in the Sanger area to even open our shed and round out a plant. True, we might have had 10 cars of plums to ship over a two weeks, three weeks period, but any man experienced in the fruit business knows that you must have a reasonable volume of perishable commodity like that so that the plums are picked today, the car will be started on its way to New York or someplace else and not held there two or three days waiting for more plums to get ripe.

Q. Did you discuss with your children the neces-

(Testimony of Floyd J. Harkness.)

sity for keeping the capital in the business, the profits? A. Yes, sir, I did.

Q. Would you please state what you said to them?

A. Well, I can't tell you in exact words.

Q. I mean substantially, the substance.

A. The substance was——

Q. This is prior to the formation of the partnership, is that correct? A. Yes, sir.

Q. Will you please state the substance of your discussions with your children?

A. Well, many times they have wanted things that I wasn't able to give them, wanted this and that, and they full well understood what the nature of my business was and where [57] the profits were going—to Steiger and Sorensen and Scoggins and other people that were operating not only on a guaranteed salary but high bonuses.

Q. Did you tell them what your idea was as to the actual distribution of profits in the partnership before you organized it?

A. I very definitely told them that if we were going to make a success of the fruit business that all we could expect would be to take a reasonable salary out and leave the balance of the earnings if there was any earnings in there for expansion and development of new business.

Q. Did they agree to your theory of conducting the partnership? A. They did.

Q. As far as participation in profits were concerned? A. They did.

(Testimony of Floyd J. Harkness.)

Q. And distribution, I mean. A. Yes.

Q. Am I correct when I state that this was one of the reasons which motivated you in forming this partnership? A. It was.

Q. Mr. Harkness, will you please explain to the Court the conditions surrounding your activity during the year, during the summer and end of '42, the prospects of your business, of the activity? [58]

A. Well, that was the first year of the war. The Japanese submarines were reported off the Coast of California, shooting them down in Santa Barbara County, destroying reserve oil stocks, tanks.

We use a great deal of Japanese labor in our farm operations, harvesting operations. They owned quite a few ranches in California. We did business with a lot of Japanese who owned their own ranches and sold their crops to us, turned them over to us on commission basis. They were being rounded up and sent to concentration camps in Arizona, Utah, Tule Lake, California.

The Department of Agriculture had issued priority lists of what commodities we could have their assistance on with the War Production Board and in procurement of nails. Their prime crops, of course, were essential, such as potatoes, onions, carrots, and the like; and canteloupes which we were handling, and some six or seven hundred carloads of grapes, 400 carloads of peaches, nectarines, were way down the list. We had no reason to expect that we would be allowed to ship but a very small portion, if any, of those crops.

(Testimony of Floyd J. Harkness.)

I did feel, however, there might be a chance to make a profit because ranch properties in World War I advanced in value. We had no OPA in World War I, and we were confronted with an OPA regulation on all our commodities in 1942—it actually became effective in 1943. We had restrictions on [59] gasoline, and inasmuch as we operated throughout the valley we had to transport crews from places like Sanger, a city of around 3,500 population, out to the surrounding country to work on the ranches. Prior to the war, when gasoline was available and tires were available, new cars were available, they transported themselves. Immediately when gasoline and tires were rationed, we had to furnish transportation for all the help.

Wages were frozen on all our help. The shipyards in San Francisco Bay Area, the airplane factories in Los Angeles, were taking all our best help down there. They could get considerable more money. The classification for an employee in a shipbuilding plant wage scale was considerably above the wage scale for packing house labor, he could get approximately three times as much. The same way in an airplane factory.

I could go on and on with the hazards that were ahead of us. We had the raisin order. We owned Thompson Seedless vineyard, we had bought the vineyard primarily as a source of shipping table grapes. The raisin industry has been since its inception in 1913 an unprofitable deal, they have had one organization after another, Sun Maid

(Testimony of Floyd J. Harkness.)

Raisin Growers sign up this and sign up that; they are now even petitioning the Department of Agriculture for a marketing agreement, they are in terrible straits. [60]

During World War I I went through that in the fruit business. Congress passed the 18th Amendment which dried up the country. Wine grapes were of no value. I had no way of knowing but what some such restriction might occur in this world war.

As it turned out, the very reverse happened. The War Materials Board, I believe it is, one of the government agencies, put a stop order on the use of grain for the manufacture of hard liquor. That occurred early in '43, and wine—I am Director of one of the cooperative wineries down in the Valley, so I know whereof I speak—wine prior to that time was selling for 40c a gallon, and when this order prohibiting the use of grain became effective, not only did the price of wine skyrocket to \$1.40, \$1.50, \$1.60 a gallon, from 40c to \$1.60 a gallon, but the eastern distillers whose operations were tied up at that time by that non-use of grain order came to California and bought up wineries. They paid fabulous prices for them. Seagram's came to California, National Distillers, Schenley. They are all still in business here.

The net result of the stoppage of the use of grain there meant that we got an increase in the price of grapes from \$20 a ton up to as high as \$140 a ton. I am sure that I couldn't foresee what the govern-

(Testimony of Floyd J. Harkness.)

ment might do as far as the outlooks for the use of grain or grapes was concerned. [61]

Q. As I take it, you did not form this partnership in anticipation of large profits?

A. No, sir, very much to the contrary. I expected that we were going to make less profit in '43 than we did in '42.

Mr. Ehrlich: If your Honor please, could I have a couple of minutes?

The Court: We will take a recess of about 10 minutes.

(Short recess.)

The Court: You may proceed.

Q. (By Mr. Ehrlich): Mr. Harkness, in addition to accumulation of profits, permitting the profits to accumulate in the business, did you have any other reasons for forming the partnership?

A. Well, very definitely, Mr. Ehrlich. I have recited here of the key men, I have recited of the knowledge that men must have of the perishable commodities, not only sales appeal but carrying quality, and I knew that my son had the qualifications. I wanted to assure him for the future and assure the United Packing Company of a competent employee, a man to take charge of the outlying districts, districts separated some 270 miles north and south and about 75 miles east and west.

Many times all the sheds or packing houses are operating at the same time. I must spend a portion of my time in [62] the office, and there must be

(Testimony of Floyd J. Harkness.)

somebody with the interest of the business at heart to supervise the operations in each district, at least once a day. In several big partnerships of brothers, notably Arena Company in Los Angeles, there are six brothers, and one of them is in each shed. Every time they operate there is one of the brothers present. They go into their operations to that extent.

Mr. Colgate, as I said, I had known him for eight or nine years, he had worked for the Peerless Pump Company, a subsidiary of the Food Machinery Corporation. Among their other activities they were the largest suppliers of irrigation pumps in the San Joaquin Valley. They had to be able to figure irrigation programs for the farmers, the amount of water that would be required, the amount that could be obtained from a certain well, in order to take care of the enterprise that they were supposed to supply water for. Mr. Colgate had majored in commerce while in college, he had signified his desire to get into the agricultural field for his life's profession. He had an uncle who is the managing partner of the Rapid Harvest Company who operate in Salinas District in lettuce and carrots, Imperial Valley, Arizona. Their business is to furnish trailers and tractors and trucks to move the crops of various shippers and growers from the field in which they are produced to the packing sheds, and his uncle, Mr. Brewer, was in much the same fix that I was, in need of men [63] on whom he could depend and weren't just floaters looking for a stake, one

(Testimony of Floyd J. Harkness.)

year's operation, getting a bonus. Mr. Brewer of the Rapid Harvest Company was very anxious to get his services as soon as he got out of the Army.

As I said before, I promised my daughter when I had agreed to take my son into the business that I would finance her in some investment, and she turned down other possible places to invest her money and decided to invest in the United Packing Company, understanding that when her husband was released from Army service that he would be allowed to participate in the partnership interest in the United Packing Company.

Q. You knew at the time you organized the company both your son and son-in-law were in the service, and you knew, naturally, that they couldn't render any service at the time. Why did you create the partnership knowing that they could not render any service until they were released from the Army?

A. I wanted to be sure of their services. My son was emphatic in his wants, and he knew my set-up of giving large bonuses. I had declined to take him in in 1941 because I was overloaded, so to speak, with percentage deals with other strangers, and he thought perhaps with the war on that I might find myself in a position where I would have to take some of these so-called percentage or bonus deals on for a term of years and that when he came back he might be confronted with the same story that he was confronted with, and I would be confronted [64] with the same situation that I was in 1941.

(Testimony of Floyd J. Harkness.)

Q. Mr. Harkness, I direct your attention to the supplemental agreement dated January 4, 1943, which fixes your salary at 75 per cent of the first \$100,000 and then allocates the profits. How was that compensation arrived at?

A. By a thorough discussion with the new partners. That is covered in the articles. It said that for the time being that I would be the only active participant, and that as soon as the other parties thereto were in position to give their services, that they would be provided for the same as I had been, with a salary.

Q. And that same procedure was followed in '45 when Colgate returned from the service?

A. It was.

Q. And as the stipulation in evidence shows, in '46 you drafted an agreement where the salaries of your son and son-in-law and yourself were again fixed.

A. That's right.

Q. And that same procedure was followed in '47?

A. That's right.

Q. With the salaries being fixed as a result of getting together, and the agreements incorporating the salaries are in evidence.

Now, in all these agreements they are based on a percentage of the profits of the United Packing Company, is that [65] correct?

A. That is correct.

Q. Mr. Harkness, did you, prior to the creation of the January 1, 1943, United Packing Company

(Testimony of Floyd J. Harkness.)

partnership, discuss tax savings which might result from the formation of the partnership?

A. They might have been discussed, but they weren't the primary motive.

Q. I am asking if you discussed it?

A. I did.

Q. Did you discuss them with counsel?

A. With counsel, yes, sir.

Q. Did you discuss them with the children?

A. I did not.

Q. Did the consideration of tax savings—what place did that play in the formation of the partnership?

A. Will you repeat the question, please?

Q. What consideration did you give to tax savings in the formation of the partnership?

A. I gave this consideration: After consulting with Counsel I stated that it was my purpose to do something for my daughter and to help her and her husband get started in life. I didn't propose to give them anything, I don't believe in giving children anything; I believe in giving them nothing but the opportunity to make good. I had promised my son that I would [66] sell him an interest in the business.

Counsel in the discussion pointed out that perhaps the daughter would be better satisfied with an outside investment. My answer to him was that that wouldn't accomplish my purpose of getting another competent and reliable man to help share the burdens of the United Packing Company. If

(Testimony of Floyd J. Harkness.)

they were financed in some other field I would still find myself in the same position of having to secure competent help on the salary-bonus proposition.

For that reason I considered only one angle, and regardless of what the tax consequences might have been, whether there had been no taxes at all, I would have made the same deal that I made.

Q. Then, as I understand your testimony, you did not discuss this tax phase with your children?

A. In generalities. I never pointed out where there would be any tax saving for me, no. They might have got it out of various things I have said, but I never sat down and figured, "Now, if we do this I will save this; and if I do that I will save that."

It was my full intent to get Mr. Colgate and my son into the business with me.

Q. For the reasons which you have testified to several times?

A. Yes, sir. [67]

Mr. Ehrlich: That is all.

The Court: Cross-examine.

Cross-Examination

By Mr. Mather:

Q. Will you explain to the Court, Mr. Harkness, what new capital came into the business by the agreement of December 31, 1942, Exhibit 11-K?

A. At the end of 1943, I believe that the capital accounts will speak for themselves, that there was considerable more capital in the business than there was at the end of 1942.

(Testimony of Floyd J. Harkness.)

Q. I am talking about 1942 when this agreement was entered into. What new capital came into the business by the agreement of December 31, 1942?

A. I made a loan to my son and to my daughter and son-in-law, Mr. Colgate. Mr. Colgate is a son of the Colgate-Palmolive-Peet family. His father is very able to have signed that note with him or loaned him the money had I needed that additional fund right at that moment.

Q. That is not my question. Did any new capital come into the business, United Packing Company, by the agreement of December 31, 1942?

A. Not except \$1,000 or \$1,500 that my son had to his credit on the books.

Q. That is the only new capital. You owed your son for services performed for prior years a balance of some \$1,300. [68]

A. Or whatever it was, in that neighborhood, yes.

Q. And the partnership agreement provided that these notes were to be paid out of the earnings of the business, didn't they? A. Yes.

Q. Now, I understand your testimony to be that you created United Packing Company in 1937?

A. No, the United Packing Company was created in 1923 by Mr. Jasper and myself and Mr. Wilhelm. The three of us originated it in 1923. Mr. Wilhelm withdrew at the end of 1923. From 1924 to 1936 Mr. Jasper and I operated under the name of United Packing Company.

Q. Then you became a sole owner in 1937, is that it? A. That's right.

(Testimony of Floyd J. Harkness.)

Q. And operated as a sole proprietorship?

A. That's right.

Q. When you talk of Mrs. Harkness you are merely referring to her because she has a community interest in this property? A. That's right.

Q. All your property was community property, wasn't it? A. That's right.

Q. And she had nothing to do with the business, did she?

A. Well, I will answer that in this way: I have taken a lot of counsel from my wife, and I assure you that her counsel has contributed a lot to my success in this world. [69]

Q. She wasn't down at the place of business operating the place of business, was she, Mr. Harkness?

A. She was born on a ranch, raised on a ranch, taught school when I was working for other people—she taught school to help pay the family bills back when I was working for Mr. Setchel and Associated Fruit Company. She became thoroughly familiar with all phases. She has actually seen every ranch that we ever bought. She has been counseled with on the sale of the products, she has been counseled with on the employment of such people as Mr. Steiger. I introduced Mr. Steiger to her before I ever hired him, and I introduced her to Mr. Sorensen. I introduced her to practically everyone since I have been in the business.

Mr. Mather: Now will you read the question, please?

(Testimony of Floyd J. Harkness.)

(Question read.)

A. She wasn't actually in the office as a stenographer or as an executive, no.

Q. (By Mr. Mather): Or performing any duties in connection with the business?

A. Physical, no; mentally, yes.

Q. What do you mean by "mentally"?

A. Counsel. I just got through——

Q. She discussed your affairs with you as any housewife would or any wife would, didn't she? [70]

A. No. I have always sought her advice on making investments and changes from one job to another. Even from the Setchel Fruit Company to the Associated Fruit Company I asked her, "Should I quit Setchel before he goes broke, and go with the Associated?" and so on and so forth.

Q. Now, after the agreement of December 31, 1942, what change was made in the conduct of the business?

A. No change could be made immediately. I had to continue along paying the high bonuses, high salaries, and putting in an extra lot of hours myself.

Q. Continued just the same as it had prior to 1942, didn't it?

A. No. We had a lot more troubles in '43 and '44 than we ever had in '42.

Q. Well——

A. The war was on, Mr. Mather.

Q. The war was on in '41?

(Testimony of Floyd J. Harkness.)

A. December 8, 1941, we actually declared war, pretty near the end of the year.

Q. How did your business change in its operation after your agreement of December 31, 1942?

A. Let me——

Q. Just answer my question if you can.

A. How did the business operations change?

Q. Yes. [71] A. They didn't change.

Q. When was the first time they changed after your agreement of December 31, 1942?

A. Well, with the return of Mr. Colgate in October, 1944, that is the first time that one of the partners participated.

Q. He wasn't a partner at that time?

A. He was a representative. Community property gave him half interest in it. He was a resident of California.

Q. It didn't give him any interest in the partnership?

A. Well, as I have testified to here, the primary purpose in the formation of the partnership was to acquire the services of Mr. Colgate.

Q. And as I understand, when he was discharged from the service in 1944 he came with United Packing as an employee? A. That's right.

Q. Prior to that time he had had no agricultural experience, had he?

A. Except with the Food Machinery Corporation.

Q. Is that agricultural experience?

(Testimony of Floyd J. Harkness.)

A. They service all types of agricultural interests in the San Joaquin Valley. That is 100 per cent of their business, the servicing of agricultural commodities and activities.

Q. How much time had he devoted with that company?

A. He had worked there every school vacation and nine months continuous just prior to his enlistment in the Army. [72]

Q. How old was he in 1942?

A. About 22 or 23.

Q. How much time had he been out of school in 1942? A. 1942?

Q. Yes.

A. He enlisted in March, I believe it was, of 1941, volunteered with the first contingent of draftees who left Fresno, in order to get his year's service completed and get back into commercial life.

Q. Now, he got in the Army in 1941. Prior to that time when had he graduated from school?

A. He didn't graduate, he quit in 1940 and put in nine months continuous service with the Food Machinery Corporation just prior to his enlistment in the Army.

Q. Prior to that time had he been in school constantly? A. Yes, sir.

Q. Has your daughter ever performed any services in connection with the business?

A. At what time?

Q. At any time.

(Testimony of Floyd J. Harkness.)

A. Yes, sir. She worked in the office just prior to her marriage for about three months.

Q. In what year? A. 1942.

Q. 1942? [73] A. Yes, sir.

Q. What doing?

A. Secretary to Mr. Bunney who is in charge of the accounting in the office.

Q. Was she paid a salary? A. She was.

Q. What was the highest salary she was ever paid?

A. I would have to ask to see the records on that.

Q. It is not material, I will withdraw the question.

A. Ordinary secretary's salary, I presume, of \$150 a month.

Q. The same salary you paid other people that performed the same services?

A. That's right.

Q. Your son was paid a salary, I believe you testified, of \$150 a month with five per cent bonus?

A. That's right, yes, sir.

Q. Was the five per cent bonus on the income of the business or five per cent bonus on the deals he handled?

A. Five per cent on the over-all picture after deducting Steiger's 25 per cent.

Q. Was that in 1941?

A. That was in 1941.

Q. Do you know how much the total amount he was paid in 1941 was? [74]

(Testimony of Floyd J. Harkness.)

A. His salary for the six months after he got out of college, he was getting \$150 a month, so around \$900; and his five per cent bonus I recall was around \$910 or \$915, such matter.

Q. Now, in 1942 he was paid a salary after he got in the Army, wasn't he? A. Yes, sir.

Q. \$75 a month? A. Yes, sir.

Q. And he carried on some other operations in addition to that, didn't he? A. He did.

Q. Were those deals connected with United Packing Company, or deals of his own?

A. They were crops of Tokay grapes which were shipped through the United Packing Company.

Q. Well, now, were they deals of his own or deals in connection with United Packing?

A. Well, he became a grower, so to speak. The Department of Agriculture has ruled in so many of the marketing agreements that the purchase of a crop changes a purchaser; whether he be a shipper or an attorney, when he buys a crop of Tokay grapes on the vines, he qualifies as a grower.

Mr. Ehrlich: That salary was \$85 a month, Mr. Mather. [75]

Q. (By Mr. Mather): It has been stipulated, Mr. Harkness, that at the time the agreement of December 31, 1942, was entered into that you retained two ranches that were excellent producers. Were those large ranches?

A. One was a 90-acre vineyard, and the other a 40-acre vineyard. At that time the partnership

(Testimony of Floyd J. Harkness.)

was formed, that was all the vineyard property that we owned.

Q. How much vineyard property did United Packing have? A. At what time?

Q. 1942 when the agreement was entered into?

A. United Packing Company had no vineyard property whatever.

Q. Isn't it a fact they had 90 acres and you had two ranches, one of 40 acres and one of 50 acres at the time? A. It is not a fact.

Q. Well, at the end of '43, what vineyards did United Packing Company have?

A. The United Packing Company had in conjunction with Mr. Sorensen purchased approximately 300 acres, and United Packing Company had bought from a Japanese who had been evacuated 40 acres on Lincoln Avenue and Tarn Avenue, just four miles south of Sanger. That is to the best of my recollection right now.

Q. What was the Parlier Ranch?

A. That is the one on Lincoln Avenue, I think.

Q. That was turned over to United Packing, wasn't it?

A. That was purchased by the United Packing Company from Wallace Kozuki, an evacuated Japanese.

Q. That was the only property they had that they were operating in 1943 as a ranch, isn't it?

A. No. The so-called River Ranch was a partnership with Chris Sorensen who had an undivided half interest in it.

(Testimony of Floyd J. Harkness.)

Q. That was a separate transaction; that wasn't operated by United Packing, as I understand?

A. It was operated by the United Packing Company.

Mr. Ehrlich: United owned half interest in it?

Mr. Mather: That's right. That is all in the stipulation.

The Court: Will we be able to finish up this afternoon?

Mr. Ehrlich: Yes, your Honor.

The Court: You have some other witnesses?

Mr. Ehrlich: We have the daughter and son and son-in-law. They won't take an hour, your Honor.

The Court: I thought we would adjourn at this time and come back at 2:00 o'clock and finish up.

We will adjourn until 2:00 o'clock.

(Whereupon, at 12:20 o'clock p.m., a recess was taken until 2:00 o'clock p.m.) [77]

Afternoon Session, 2:00 P.M.

Whereupon

FLOYD J. HARKNESS

resumed his testimony as follows:

Cross-Examination

(Resumed)

The Court: You may proceed with your cross-examination.

By Mr. Mather:

Q. Mr. Harkness, I was inquiring about the Parlier Ranch of the partner of the United Packing Company. I believe you testified that that was acquired by the United Packing Company sometime in '43?

A. Yes. As I recall, it was September, 1943.

Q. I show you the partnership income tax return——

Mr. Ehrlich: For what year?

Mr. Mather: '43.

Q. (By Mr. Mather): The '43 schedule form, income and expenses. What does that mean where it says, "Date acquired 1/1/1943," referring to depreciation on those?

A. I presume that means January 1.

Q. That refers to this Parlier Ranch, doesn't it?

A. The 40 acres, yes.

Q. That is the only property they had, that they were operating? [78]

Mr. Ehrlich: You mean United Packing?

(Testimony of Floyd J. Harkness.)

Q. (By Mr. Mather): That is the only property United Packing was operating in 1943, wasn't it?

A. No, they operated the so-called River Ranch, 300-acre ranch.

Q. I am not talking about that, that is covered in the stipulation and that was operated by Sorensen and United Packing received half the income from the operation of that ranch?

A. That's right.

Mr. Mather: I will offer in evidence at this time, if there is no objection, the partnership return of United Packing Company for the year 1943.

(Whereupon the document was marked for identification as Respondent's Exhibit M.)

Mr. Ehrlich: No objection.

The Court: Admitted as Respondent's Exhibit M.

(Whereupon the document marked Respondent's Exhibit M for identification was received.)

(Testimony of Floyd J. Harkness.)

RESPONDENT'S EXHIBIT M

Form 1065

Page 1

Treasury Department

Internal Revenue Service

United States

Partnership Return of Income

1943

(To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1943

or fiscal year beginning, 1943, and ending, 1944

(File this return not later than the 15th day of the 3d month following the close of the taxable year)

(Print Plainly Name and Business Address of the Organization)

(Name) United Packing Co.

(Street and number) 216 Rowell Bldg.

(City or town) Fresno (State) California

Business or Profession Growers-Shippers

Item & Inst. No.

Gross Income

1. Gross receipts from business or profession
see attached schedule\$294,026.82

2. Less cost of goods sold :
(a) Inventory at beginning of year
(b) Merchandise bought for sale
(c) Cost of labor, supplies, etc.
(d) Total of lines (a), (b), and (c)
(e) Less inventory at end of year

3. Gross profit (or loss) from business or profession
(item 1 minus item 2) 294,026.82

4. Income (or loss) from other partnerships,
syndicates, pools, etc. (State separately
name, address, and amount) :
United Pkg. Co. and C. A. & Katherine
Sorensen—Fresno 60,309.92

5. Interest on bank deposits, notes, etc.

6. Interest on corporation bonds, etc. (except
interest to be reported in item 7)

7. Interest on tax-free covenant bonds upon
which a Federal tax was paid at source

8. Interest on Government obligations, etc. :

(a) From line (h), Schedule A

(b) From line (i), Schedule A

9. Rents

10. Royalties

11. Net gain (or loss) from sale or exchange of
property other than capital assets
(from Schedule B)

(Testimony of Floyd J. Harkness.)

12.	Dividends	
13.	Other income (state nature of income) : Form #1040-F attached	7,245.26
14.	Total income in items 3 to 13 (enter nontaxable income in Schedule A and G)	\$361,582.00
Deductions		
15.	Salaries and wages (do not include compensation for partners)	
16.	Rent	
17.	Repairs	
18.	Interest on indebtedness (explain in Schedule F)	
19.	Taxes (explain in Schedule C)	
20.	Losses by fire, storm, shipwreck, or other casualty, or theft (submit schedule)	
21.	Bad debts (explain in Schedule D)	
22.	(a) Depreciation (explain in Schedule E) (b) Amortization of emergency facilities (attach statement)	
23.	Depletion of mines, oil and gas wells, timber, etc. (submit schedule)	
24.	Other deductions authorized by law (explain in Schedule F)	
25.	Total deductions in items 15 to 24	0
26.	Ordinary net income (item 14 minus item 25)....	\$361,582.00
27.	Net short-term capital gain (or loss) (from line 1, column 4, Summary, Schedule H)	
28.	Net long-term capital gain (or loss) (from line 2, column 4, Summary, Schedule H)	

Page 2

Schedule A.—Interest on Government Obligations, Etc.

[No data recorded in this section.]

Schedule B.—Gains and Losses From Sales or Exchanges of Property
Other Than Capital Assets

[No data recorded in this section.]

Schedule C.—Taxes

[No data recorded in this section.]

Schedule D.—Bad Debts

[No data recorded in this section.]

(Testimony of Floyd J. Harkness.)

Schedule E.—Depreciation

[No data recorded in this section.]

Schedule F.—Explanation of Deductions Claimed in Items 18 and 24

[No data recorded in this section.]

Page 3

Schedule G.—Nontaxable Income Other Than Interest Reported in
Schedule A

[No data recorded in this section.]

Schedule H.—Gains and Losses From Sales or Exchanges of
Capital Assets

[No data recorded in this section.]

Schedule I.—Contributions or Gifts Paid

[No data recorded in this section.]

(Testimony of Floyd J. Harkness.)

Schedule J.—Partners' Shares of Income and Credits. (See Instruction 29)

Page 4

1. Name and address of each partner Where return of partner or member is filed in another collection district, specify district If the full time of any partner was not devoted to the business, the percentage of time devoted must be stated	2. Ordinary net income less interest on Government obligations, etc., subject to surtax only (item 26, page 1, minus item 8(a), page 1)	3. Net short-term gain (or loss) from sale or ex- change of capital assets (from Schedule H, Sum- mary, line 1, column 4)	4. Net long-term gain (or loss) from sale or ex- change of capital assets (from Schedule H, Sum- mary, line 2, column 4)
(a) Floyd J. Harkness, 3767 Huntington, Fresno, Cal.	\$146,645.50	\$.....	\$.....
(b) Floyd J. Harkness, Jr.,* 3767 Huntington, Fresno, Cal.	71,645.50	.....	.....
(c) Molly A. Harkness, 3767 Huntington, Fresno, Cal.	71,645.50	.....	.....
(d) Harriet Harkness Colgate, 3767 Huntington, Fresno, Cal.	71,645.50	.....	.....
(e)			
(f) *India-China Wing—ATC—U.S. Army			
(g)			
Totals.....	<u>\$361,582.00</u>	.....	.....

Continuation of Schedule J

[No data recorded in this section.]

(Testimony of Floyd J. Harkness.)

Questions

1. Date of organization 1/1/43.
2. Nature of organization (partnership, syndicate, pool, joint venture, etc.) Partnership.
3. Was a return filed for preceding year? No. If so, to which collector's office was it sent?
4. Check whether this return was prepared on the cash ☐ or accrual ☒ basis.
5. State whether inventories at the beginning and end of the taxable year were valued at (a) cost, or (b) cost or market, whichever is lower (a).
If any other basis is used, attach statement describing basis fully, state why used and the date inventory was last reconciled with stock
6. Did the organization at any time during its taxable year have in its employ more than eight individuals? (Answer "Yes" or "No") Yes.
If answer is "Yes," has the organization in this return taken a deduction for any amount of wages or salaries representing an increase or decrease in rate during the taxable year? (Answer "Yes" or "No") No. If answer to second question is "Yes," attach a statement explaining all such increases or decreases. If any of such increases or decreases required the prior approval of the National War Labor Board or the Commissioner of Internal Revenue as stated in instruction 15, attach also a copy of the authorization for each of such increases or decreases.
7. Did the organization at any time during the taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company, as defined in section 501 of the Internal Revenue Code? (Answer "Yes" or "No") No.
If answer is "Yes," attach schedule required by Instruction I.
8. Was return of information on Forms 1096 and 1099, or Forms V-2 and W-2, filed for the calendar year 1943? (See Instruction H) Yes.

Affidavit (See Instruction D)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the accounting period stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

(Partner or member) F. J. Harkness (Date) 3-9-44

216 Rowell Bldg., Fresno, Calif.

(Address of partner or member)

Subscribed and sworn to before me this 9th day of March, 1944.

Julius Hansen, Notary Public.

(Testimony of Floyd J. Harkness.)

United Packing Co.—Fresno, Calif.

Statement of Income and Expense—1943

Income

Material Gain: Clovis	\$ 2,268.06	
Lodi	4,986.42	
Sanger	5,142.22	
Tagus	1,695.50	
	<hr/>	14,092.20
Labor & Earnings: Clovis	73,378.48	
Lodi	21,617.34	
Sanger	123,539.34	
Tagus	41,628.77	
	<hr/>	260,163.93
Commissions: Arvin	15,743.54	
Clovis	2,151.37	
Exeter	250.00	
Firebaugh	1,563.65	
Lodi	87.85	
Sanger	49,310.58	
	<hr/>	69,106.99
Growing Deals & Leases: Arvin	2,222.79	
Lodi	50,341.47	
Sanger	21,058.25	
	<hr/>	73,622.51
Midway	—9,453.00	
	<hr/>	64,169.51
Claims		3,702.12
Interest		321.49
Discount		8,530.85
Truck Earnings		990.66
		<hr/>
		\$421,077.75

(Testimony of Floyd J. Harkness.)

Expense

Packing House: Arvin	\$ 1,284.84	
Clovis	1,766.09	
Exeter	106.37	
Firebaugh	1,035.73	
Lodi	3,095.89	
Sanger	10,017.01	
Tagus	644.26	
	<hr/>	
	17,950.19	
General	26,675.40	
Depreciation (schedule attached)	6,134.01	
	<hr/>	
		50,759.60
		<hr/>
		370,318.15
Sanger & Clovis District Manager's Share		53,283.59
		<hr/>
		317,034.56
Bonuses to key employees:		
Sales Manager	7,532.96	
Office Manager	7,532.96	
Arvin-Lodi Manager	7,941.82	
	<hr/>	
		23,007.74
		<hr/>
Net Profit		\$294,026.82

United Packing Co.—Fresno, Calif.

Depreciation Schedule

Assets	Date Acquired	Cost	Estimated Life	Deprec. 1943
Packing Sheds	1930-42	\$14,039.20	14 yrs.	\$1002.80
Packing Shed Equipment .....	.....1939	653.66	5 yrs.	\$130.73
Packing Shed Equipment .....	.....1940	2,283.07	5 yrs.	456.61
Packing Shed Equipment .....	.....1941	1,756.79	5 yrs.	351.36
Packing Shed Equipment .....	.....1942	1,517.40	5 yrs.	303.48
Packing Shed Equipment .....	.....1943	2,689.65	5 yrs.	537.93
<hr/>				
Office Equipment .....	.....1934-43	1,414.73	10 yrs.	1780.11
				141.48
1940 GMC Truck .....	.....1940	1,127.85	Balance	187.98
1941 Buick .....	.....1941	1,352.70	4 yrs.	338.17
1941 Dodge .....	.....1941	817.60	4 yrs.	204.40
1942 Buick .....	.....6-17-42	1,809.06	4 yrs.	452.27
1942 Dodge .....	.....10-29-42	1,575.92	4 yrs.	393.98
1932 Ford Bus .....	.....6-15-42	300.00	3 yrs.	100.00
1935 Chevrolet Truck .....	.....6-15-42	300.00	3 yrs.	100.00
1929 Chevrolet Truck .....	.....7-12-42	200.00	3 yrs.	66.67
1936 Ford Truck .....	.....8-31-42	590.33	3 yrs.	196.78

1931 Chevrolet Truck	12-23-42	100.00	2 yrs.	50.00	<hr/>	2097.19	
1937 Studebaker Truck	11-29-43	250.00	3 yrs.	6.94			
Otani Tractor	5-15-42	1,290.56	5 yrs.			258.11	
Case Tractor1940	1,342.25	4 yrs.	335.57	<hr/>	684.59	
AC Tractor .....	.....1941	1,000.00	4 yrs.	250.00		
LA Tractor	11-27-43	1,806.24	4 yrs.	64.51			
Duster	9-15-43	517.63	5 yrs.	34.51			
Case Tractor10-12-43	1,054.57	4 yrs.	43.94	<hr/>	169.73	
Case Cultivator .....	.....10-12-43	160.22	5 yrs.	5.34		
Miscellaneous Tools .....	.....1940	602.25	5 yrs.	120.45		
						<hr/>	\$6134.01

(Testimony of Floyd J. Harkness.)

Form 1040 F

Page 1

Treasury Department

United States

Internal Revenue Service

Schedule of Farm Income and Expenses

1943

For Calendar Year 1943

Or for year beginning, 1943, and ending, 1944

Name United Packing Co. — Parlier Ranch
Address P.O. Box 546, Fresno, Calif.
Location of farm or farms Parlier, California
Number of acres in each farm 40

Farm Income for Taxable Period

1. Sale of Livestock Raised [No data supplied.]	2. Sale of Produce Raised Fruits & Raisins...\$18,277.59
	Total.....\$18,277.59
3. Other Farm Income [No data supplied.]	4. Sale of Livestock & Other Items Purchased [No data supplied.]

Summary of Income and Deductions Computed on a Cash Receipts
and Disbursements Basis

1. Sale of livestock raised.	6. Expenses
2. Sale of produce raised..\$18,277.59	(from page 3)\$ 9,625.50
3. Other farm income.	7. Depreciation
4. Profit on sale of livestock and other items purchased.	(from page 3).... 1,406.83
	8. Total De-
5. Gross Profits .....\$18,277.59	ductions.....\$10,032.33
9. Net farm profit (line 5 minus line 8) to be reported in item 8 on Form 1040	\$ 7,245.26

Page 2

Farm Inventory for Income Computed on an Accrual Basis
[No data supplied.]

Summary of Income and Deductions Computed on an Accrual Basis
[No data supplied.]

(Testimony of Floyd J. Harkness.)

Farm Expenses for Taxable Year (See Instructions)

1. Items	2. Amount
Labor hired	\$5,406.75
Feed purchased	67.05
Seed, plants, and trees purchased	
Spraying, Etc.	160.61
Supplies purchased	126.12
Cost of repairs and maintenance	802.09
Breeding fees	
Fertilizers and lime	1,120.93
Veterinary and medicine for livestock	
Gasoline, other fuel and oil for farm business	690.14
Storage and warehousing	
Taxes	243.06
Insurance on property (except your dwelling)	169.73
Interest on farm notes and mortgages	73.09
Water rent, electricity, and telephone	316.56
Rent of farm, part of farm, or pasturage	
Freight, yardage, express, and trucking	81.33
Automobile upkeep (farm share)	246.34

3. Items
(Continued)4. Amount
(Continued)

Other farm expenses (specify) :	
Miscellaneous	\$ 121.70

Total of Columns 2 and 4 (enter on line 6 of summary on
page 1 (cash basis) or line 7, page 2 (accrual basis))\$9,625.50

Depreciation (See Instructions)

1. Kind of property (if buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepre- ciable property)	4. Assets fully de- preciated in use at end of year	5. Depreciation allowed (or allow- able) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
Vineyard	1/1/43	\$2875.00	0	0	\$2875.00	0	20	\$143.75
Orchard	1/1/43	1035.00	0	0	1035.00	0	20	51.75
Buildings	1/1/43	5000.00	0	0	5000.00	0	15	333.33
Tractor	1/1/43	1000.00	0	0	1000.00	0	4	250.00
Farm Tools	1/1/43	1256.00	0	0	1256.00	0	5	251.20
Picking Equip.	1/1/43	1784.00	0	0	1784.00	0	5	356.80
Horses	1/1/43	100.00	0	0	100.00	0	5	20.00
Total (enter on line 7 of summary on page 1 (cash basis) or line 8, page 2 (accrual basis))								\$1406.83

Remarks:

Instructions

Form 1040 F—Treasury Department Internal Revenue Service

[Not Printed.]

Admitted in evidence: January 11, 1949.

(Testimony of Floyd J. Harkness.)

Q. (By Mr. Mather): Now, the two ranches that you had that weren't in the partnership, were they 40 acres and 50 acres?

A. No, sir, 40 acres and 90 acres.

Q. Well, I will show you your income tax return for 1943 and the farm schedule attached to that. It shows Selma [79] Ranch, 90 acres, and then over in here in the depreciation schedule it shows vineyard, 40 acres, and new vines, 50 acres.

Q. What does that mean?

A. That means that I bought a 90-acre piece of land from the California Lands as a holding company for the Bank of America, and on that acreage there was 40 acres of producing vines and 50 acres of new vines on the same piece of property.

Q. Well, now, what ranches were you operating individually in 1943?

A. That same 90 acres there, of which 40 acres was producing vines of old age when I acquired it, and the 50 acres of new vines that were planted, I think in about 1938 or '39 on the same ranch.

Q. Those were the only ranches that you had at that time that you were operating?

A. No, sir. I owned a ranch of 40 acres called the Earl Ranch; bought that from Fred P. Holm, situated on the corner of Mountain View and Van Horn Avenue, one mile south and east of Selma, California.

Q. Were you operating that in '43?

A. I was.

Q. Take your return and show me any place in

(Testimony of Floyd J. Harkness.)

there where there is income or loss for anything other than the Selma Ranch of 90 acres?

A. I think in your files you have a partnership return [80] of Earl D. Harkness and Gladys Harkness, and Floyd J. Harkness and Molly A. Harkness. I had previous to 1943 sold my brother a half interest in that 40 acres.

Q. Well, now, refer to the return which is before you and just tell me any place that any reference is made to any ranch property other than the 90-acre Selma Ranch. Maybe I can help you.

A. All right, I would appreciate it.

Q. Referring to the return now, can you answer my question, Mr. Harkness?

A. Yes, sir. It says, "Income from partnerships," and so forth, and it shows there the United Packing Company partnership, and it shows a partnership existing between F. J. and Molly A. Harkness and E. D. and Gladys Harkness with an income of \$2,021.38.

Q. That was operated as a partnership?

A. With my brother.

Q. Wasn't one of the properties referred to in the stipulation as the two properties which you retained and had not turned over to the partnership?

A. Earl D. and Gladys Harkness are not a member of the United Packing Company.

Q. Another thing I want to get straight is income on your '43 return other than United Packing income is shown as dividends and 50 per cent of the

(Testimony of Floyd J. Harkness.)

Selma Ranch operation, and that [81] is all the gross income you show on that return, isn't it?

A. This says "Income or loss from partnerships" (plural). That means my partnership arrangement with United Packing Company and partnerships (plural), that means with Earl D. and Gladys Harkness.

Q. OK.

A. That does not say "Income from United Packing Company."

Q. All right. All I am trying to find out is where this \$11,000 of income from other sources that is shown in Exhibit 18 is disclosed in your '43 return.

Mr. Ehrlich: Mr. Mather, Mr. Bunney is the bookkeeper. Can you have him do it?

Q. (By Mr. Mather): Now, I think I can straighten you out on this, Mr. Harkness. Exhibit 18 shows \$11,000 odd of other income other than partnerships.

Mr. Ehrlich: Other than United Packing Company.

Q. (By Mr. Mather): Other than United Packing Company, and that is represented by the \$1,500 dividends, \$2,100 farm income, and the balance is in this \$111,000 partnership income. That is your understanding?

A. Yes, sir.

Mr. Ehrlich: Including his wife's, Mr. Mather.

Q. (By Mr. Mather): It is only your half, your community interest?

A. That's right.

(Testimony of Floyd J. Harkness.)

Mr. Mather: I will offer in evidence Mr. Harkness' '43 return.

(Whereupon the document was marked for identification as Respondent's Exhibit N.)

The Court: Admitted as Respondent's Exhibit N.

(Whereupon the document marked Respondent's Exhibit N for identification was received.)

RESPONDENT'S EXHIBIT N

Form 1040 Page 1

Treasury Department
Internal Revenue Service United States
Individual Income and Victory Tax Return 1943
For Calendar Year 1943

for fiscal year beginning, 1943, and ending, 1944

(Name) Floyd J. Harkness
(Street) 3767 Huntington Blvd.
(City) Fresno (State) California

Occupation Grower-Shipper Social Security number, if any.....

Computation of Net Income

Income

Column 1 Income Tax Net Income	Column 2 Victory Tax Net Income
--------------------------------------	---------------------------------------

- | | | |
|---|-------------|-------------|
| 1. Salary, Wages, and Compensation for Personal Services. | | |
| 2. Dividends. | | |
| 3. Interest on corporation bonds,
bank deposits, notes, etc. | \$ 1,527.08 | \$ 1,527.08 |
| 4. Interest on Government obligations, etc. :
(a) From line A (8), Schedule A
(b) From line B (5) and (3), Schedule A | | |
| 5. Annuities. | | |
| 6. (a) Net gain (or loss) from sale or exchange
of capital assets. (From Schedule B)
(b) Net gain (or loss) from sale or exchange of
property other than capital assets. (From Schedule B) | | |

(Testimony of Floyd J. Harkness.)

7.	Rents and royalties. (From Schedule C(1))		
8.	Net profit (or loss) from business or profession.		
	50% of #104 of att'd.	2,164.92	2,164.92
	(State total receipts, from line 1, Schedule C(2) \$....)		
9.	Income (or loss) from partnerships; fiduciary income; and other income. (From Sched. C(3))..	111,166.88	111,166.88
10.	Total income in items 1 to 9.....	<u>\$114,858.88</u>	<u>\$114,858.88</u>

Deductions

11.	Contributions. (Explain in Schedule D)		
12.	Interest. (Explain in Schedule E) (See Instructions 12 and 16 for Victory Tax deduction)	\$ 288.41	x x x x
13.	Taxes. (Explain in Schedule F) (See Instructions 13 and 16 for Victory Tax deduction)	6,191.98	x x x x
14.	Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule G)		x x x x
15.	Medical, dental, etc., expenses. (Explain in Schedule H)		x x x x
16.	Other deductions authorized by law. (Explain in Schedule G)	216.90	\$ 216.90
17.	Total deductions in items 11 to 16.....	<u>\$ 6,697.29</u>	<u>\$ 216.90</u>
18.	Income Tax net income (item 10, col. 1, less item 17, col. 1)	<u>\$108,161.59</u>	x x x x
19.	Victory Tax net income (item 10, col. 2, less item 17, col. 2)	x x x x	<u>\$114,641.98</u>

Income and Victory Tax

20.	Unpaid balance of 1943 Income and Victory Tax (from line 22, page 4)	\$10,397.86	
21.	You may postpone, until not later than March 15, 1945, payment of the amount you owe up to one-half of item 19(c), page 4. Enter the amount postponed. (For persons whose surtax net income for 1942 or 1943 exceeded \$20,000, see Schedule L-2)	4,617.12	
22.	Amount paid with this return (item 20 less item 21).....	\$ 5,780.74	
23.	Refund or Credit. [None shown.]		

I declare under the penalties of perjury, that this return (including any accompanying schedules and statements) has been examined by me

(Testimony of Floyd J. Harkness.)

and to the best of my knowledge and belief is a true, correct, and complete return.

Floyd J. Harkness March 10, 1944.
(Signature of taxpayer) (Date)

Page 2

Those Whose Income Is Solely From Salaries May Disregard This Page

Schedule A.—Interest and Ownership of Taxable Government Obligations, Etc.

[No data recorded in this section.]

Schedule B.—Schedule B (Form 1040) is a separate sheet and should be used in reporting gains and losses from sales or exchanges of capital assets and property other than capital assets, and filed with and as a part of this return.

Schedule C(1).—Income From Rents and Royalties

[No data recorded in this section.]

Schedule C(2).—Profit (or Loss) From Business or Profession

[No data recorded in this section.]

**Schedule C(3).—Income From Partnerships, Fiduciaries,
and Other Sources.** (See Instruction 9)

Name and address of partnership, syndicate, etc. United Packing Co.,
Fresno, Calif. _____ Amount, \$109,145.50

Name and address F. J. & Molly A. & E. D. &
Gladys Harkness -----Amount, 2,021.38
Other income (state nature) -----Amount,

Total (enter as item 9, page 1)\$111,166.88
Page 3

Schedule D.—Contributions

[No data recorded in this section.]

Schedule E.—Interest. (See Instruction 12)

1. To Whom Paid	2. Amount
-----------------	-----------

Federal Land Bank, mortgage	\$288.41
Total. (Enter as item 12, page 1)	\$

Schedule F.—Taxes. (See Instruction 13)

1. Nature	2. Amount
-----------	-----------

Fresno City & County taxes	\$ 455.60
Calif. State Income Tax	5,736.38

Total. (Enter as item 13, page 1)\$6,191.98

(Testimony of Floyd J. Harkness.)

Schedule G.—Losses and Other Deductions. (See Inst. 14 and 16)

1. Item No.	2. Explanation	3. Amount
16	Expenses away from home in pursuit of business	\$216.90

Schedule H.—Medical, Dental, Etc., Expenses

[No data recorded in this section.]

Schedule I.—Personal Exemption and Credit for Dependents
(See Tax Computation Instructions)

(1) Personal Exemption

Status	Number of months during the yr. in each status	Credit claimed
Single, or married and not living with husband or wife, and not head of family		
Married and living with husband or wife	12	\$100.00
Head of a family (explain below)		

(2) Credit for Dependents

Name of dependent and relationship	Number of months during the year Under 18 18 years years old or over	Credit claimed (Head of a family may not claim credit for dependent used to qualify him as head of a family)
Emma F. Harkness	12	\$350.00
(Mother)		

Reason for support if 18 years or over Physically incapable.

Schedule J.—Computation of Earned Income Credit

(See Tax Computation Instructions)

(1) If your net income is \$3,000 or Less, use only this part of schedule
[No data recorded in this section.](2) If your net income is More than \$3,000, use only this
part of schedule

Earned net income (not more than \$14,000)	\$ 14,000.00
Net income (item 18, page 1)	108,161.59
Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than \$300)	1,400.00

Questions

- Did you file a return for any prior year? Yes. If so, what was the latest year? 1942. To which Collector's office was it sent? San Francisco.
- If you claimed credit for tax paid in line 21 (c), page 4, to which Collector's office was your declaration sent? San Francisco.
- If separate return was made for the current year, state:
 - Name of husband or wife Molly A. Harkness.
 - Personal exemption, if any, claimed thereon 1,100.00.
 - Collector's office to which it was sent San Francisco.

(Testimony of Floyd J. Harkness.)

4. Check whether this return was prepared on the cash ☐ or accrual ☒ basis.
5. Was the rate of your salary or wages increased or decreased during your taxable year? (Yes or No)
6. Did you receive during your taxable year any amount claimed to be nontaxable (see General Instruction I)? No. If so, attach schedule showing source, nature, and amount of such income.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation, or a personal holding company as defined by section 501 of the Internal Revenue Code? No. If so, attach statement required by General Instruction L.

Page 4

Computation of Income and Victory Tax
(See Tax Computation Instructions)

1. Income Tax net income (item 18, page 1)	\$108,161.59	
2. Less: Personal exemption. (From Schedule I-(1))	\$ 100.00	
3. Credit for dependents. (From Schedule I-(2))	350.00	450.00
4. Balance (surtax net income)		\$107,711.59
5. Less: Certain interest on Government obligations (item 4 (a), page 1)		
6. Earned income credit. (From Schedule J-(1) or J-(2))	1,400.00	1,400.00
7. Balance subject to normal tax		\$106,311.59
8. Normal tax (6% of line 7)	\$ 6,378.68	
9. Surtax on amount in line 4. (See Surtax Table, page 3 of Instructions)		65,232.16
10. Total Income Tax (line 8 plus line 9). (If Schedule B is used and alternative tax computation made, enter line 16, Schedule B)		\$ 71,610.84
11. Less: Income Tax paid to a foreign country or U. S. possession. (Attach Form 1116)		0
12. Balance of Income Tax		\$ 71,610.84
13. Net Victory Tax (line 6 of Victory Tax Schedule, below)		5,100.90
14. Total of lines 12 and 13		\$ 76,711.74

(Testimony of Floyd J. Harkness.)

15. Income Tax paid at source on tax-free covenant bond interest (See Footnote 1)	0
16. Line 14 less line 15	\$ 76,711.74
17. Income Tax for 1942. (See Statement, Form 1125, from Collector) (First, see page 4 of Instructions).....	\$ 36,936.99
18. Enter line 16 or 17 whichever is Larger. (Members of the armed forces see page 4 of Instructions).....	\$ 76,711.74
19. Forgiveness Feature (Don't fill in (a), (b), and (c) below, if either line 16 or 17 is \$50 or less):	
(a) Enter line 16 or 17, whichever is Smaller	\$36,936.99
(b) Enter \$50 or three-fourths of (a), immediately above, whichever is Larger. This is the Forgiven part of the tax	\$27,702.74
(c) Enter the Unforgiven part of the tax which is the Balance (subtract (b) from (a)). (See Footnote 2)	9,234.25
20. Total Income and Victory Tax. (Total of lines 18 and 19 (c))	\$ 85,945.99
21. Less: (a) Income and Victory Tax withheld by employer	0
(b) Income Tax paid on 1942 income.....	\$18,468.50
(c) Tax paid on 1943 income on account of Declaration of Estimated Tax....	57,079.63
(d) Total payments	75,548.13
22. Unpaid Balance of Income and Victory Tax. (If line 20 is larger than line 21 (d), enter the difference here and also as item 20, page 1; if not, see item 23, page 1) ..	\$ 10,397.86

Footnote 1.—If you claim a credit in line 15, disregard lines 19 (a) and (b), complete Schedule L-1 on page 4 of Instructions, and enter result in line 19 (c). Attach completed schedule.

Footnote 2.—If your surtax net income for 1942 or 1943 exceeded \$20,000, requiring you to complete Schedule L-2, enter here the amount shown on line 10 or 27 of such schedule, \$..... and increase 19 (c) by such amount.

Schedule K.—Victory Tax. (See Tax Computation Instructions)

1. Victory Tax net income (item 19, page 1)	\$ 14,641.98
2. Less: Specific exemption (\$624 if return reports income of only one person; otherwise, see Instructions, page 3)	624.00
3. Income subject to Victory Tax (line 1 less line 2)	\$ 14,017.98
4. Victory Tax before credit (5% of line 3)	\$ 5,700.90

(Testimony of Floyd J. Harkness.)

5. Victory Tax credit:

- (a) Single person, or married person not living with husband or wife: 25% (plus 2% for each dependent) of line 4, but not more than \$500 (plus \$100 for each dependent).
- (b) Married person living with husband or wife if separate returns are filed: 40% (plus 2% for each dependent) of line 4, but not more than \$500 (plus \$100 for each dependent)\$ 600.00
- (c) Married person living with husband or wife if only one return or a joint return is filed, or head of a family: 40% (plus 2% for each dependent) of line 4, but not more than \$1,000 (plus \$100 for each dependent). (See Schedule I-(2), for exclusion of one dependent by head of a family).

6. Net Victory Tax (line 4 less line 5). (Enter in line 13, above)\$ 5,100.90

Schedule L.—To be used only by individuals whose surtax net income for 1942 or 1943 exceeded \$20,000

Schedule to determine whether Section 6 (c) of the Current Tax Payment Act of 1943 is applicable

[No data recorded in this section.]

Form 1040 F

Treasury Department Page 1

Internal Revenue Service United States
Schedule of Farm Income and Expenses 1943
For Calendar Year 1943

Or for year beginning, 1943, and ending, 1944

Name F. J. & Molly A. Harkness (Selma Ranch)
Address 3767 Huntington Blvd., Fresno, Calif.
Location of farm or farms Route 2, Box 93, Selma, Calif.
Number of acres in each farm 90

Farm Income for Taxable Period

1. Sale of Livestock Raised

[No data recorded in this section.]

2. Sale of Produce Raised

Cotton\$ 120.59
Other (specify):
Raisins 19,051.46

Total.....\$19,172.05

(Enter on line 2 of summary below)

(Testimony of Floyd J. Harkness.)

3. Other Farm Income	
Agricultural program payments	\$61.34
Total.....	\$61.34
(Enter on line 3 of summary below)	

4. Sale of Livestock and Other Items Purchased
[No data recorded in this section.]

Summary of Income and Deductions Computed on a Cash
Receipts and Disbursements Basis

1. Sale of livestock raised.	
2. Sale of produce raised	\$19,172.05
3. Other farm income	61.34
4. Profit on sale of livestock and other items purchased.	
5. Gross Profits	\$19,233.39
6. Expenses (from page 3)	\$13,379.86
7. Depreciation (from page 3)	1,523.69
8. Total Deductions	\$14,903.55
9. Net farm profit (line 5 minus line 8) to be reported in item 8 on Form 1040	\$ 4,329.84
	Page 2

Farm Inventory for Income Computed on an Accrual Basis
[No data recorded in this section.]

Summary of Income and Deductions Computed on an Accrual Basis
[No data recorded in this section.]

Page 3

Farm Expenses for Taxable Year (See Instructions)

1. Items	2. Amount
Labor hired	\$8,442.26
Feed purchased.	
Seed, plants, and trees purchased	298.32
Machine hire	60.00
Supplies purchased	503.99
Cost of repairs and maintenance	916.78
Breeding fees.	
Fertilizers and lime	1,148.27
Veterinary and medicine for livestock	5.50
Gasoline, other fuel and oil for farm business	425.46
Storage and warehousing.	
Taxes	324.29

(Testimony of Floyd J. Harkness.)

Insurance on property (except your dwelling)	185.71
Interest on farm notes and mortgages	360.50
Water rent, electricity, and telephone	316.31
Rent of farm, part of farm, or pasturage.	
Freight, yardage, express, and trucking.	
Automobile upkeep (farm share)	102.72

3. Items
(Continued)

4. Amount
(Continued)

Other farm expenses (specify) :	
Spray and sulphur	\$ 289.75
Total of Columns 2 and 4 (enter on line 6 of summary on	

page 1 (cash basis) or line 7, page 2 (accrual basis)).....\$13,379.86

(Testimony of Floyd J. Harkness.)

Depreciation (See Instructions)

1. Kind of property (if buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepre- ciable property)	4. Assets fully de- preciated in use at end of year	5. Depreciation allowed (or allow- able) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
Vineyard 40 A.	1/41	\$6991.86	0	\$1165.30	\$5826.56	2	10	\$582.65
Buildings	1/41	4093.62	0	545.82	3547.80	2	13	272.91
New Vyd. 50 A.	1/41	2237.08	0	0	2237.08	0	20	111.85
Shed	5/42	330.85	0	14.71	316.14	8 mo.	14	22.06
Pipeline	2/42	1203.78	0	66.88	1136.90	10 mo.	14	80.25
Tractor	1941	875.50	0	437.74	437.76	2	2	218.88
Farming Tools	1941	585.50	0	234.20	351.30	2	3	117.10
Team Mules	1941	278.75	0	111.50	167.25	2	3	55.75
Refrigerator	1942	125.00	0	25.00	100.00	1	4	25.00
Tools, Boxes	1942	186.22	0	37.24	148.98	1	4	37.24
Total (enter on line 7 of summary on page 1 (cash basis) or line 8, page 2 (accrual basis))								\$1523.69

Remarks:

Page 4

Instructions
Form 1040 F—Treasury Department Internal Revenue Service
[Not Printed]

Admitted in evidence Jan. 11, 1949.

(Testimony of Floyd J. Harkness.)

Mr. Mather: If your Honor please, those returns are for my files, and I will ask leave to substitute photostats.

The Court: You may substitute a photostatic copy for each of the exhibits, M and N.

Q. (By Mr. Mather): Now, Mr. Harkness, 1942 had been a pretty successful year, hadn't it?

A. Yes. We had been able to take advantage of the war effort before any regulations had become effective.

Q. As a matter of fact, your income for '41 was about \$22,000, and 1942, \$141,000.

A. That is approximately correct, yes.

Q. It is so stipulated. A. Yes.

Q. That is, income from United Packing? [83]

Mr. Ehrlich: That is correct.

Q. (By Mr. Mather): I assume you had tax advice with respect to preparing your returns?

A. I did.

Q. And you knew that you were approaching the 50 per cent bracket with respect to surtax in 1942?

A. I paid a tax, I believe it was about that.

Q. And you appreciated if 1943 was as successful a year as '42 that you would still be in the 50 per cent bracket? A. Yes, sir.

Q. And if that income were allocated between the family group, why, your income tax would be considerably less? A. Yes, sir.

Q. What effect did that have on the creation of this agreement of December 31, 1942?

(Testimony of Floyd J. Harkness.)

A. I stated this morning that I would have formed the partnership regardless of the tax.

Q. But you appreciated the tax saving?

A. I appreciated it.

Q. Well, you knew about it?

A. Well, I knew about it, yes.

Q. I have a couple of other questions, Mr. Harkness. At the time the agreement of December 31, 1942, was entered into, did either your son or your daughter have any [84] property of their own?

A. No. My son had no money and some credit on the books of United Packing Company, but they had both just graduated within a year from college, within a year prior to the formation of the partnership.

Q. Was there any transfer of property to United Packing Company at the time of this agreement?

Mr. Ehrlich: What do you mean, Mr. Mather?

Q. (By Mr. Mather): I will clarify that. What documents transferring any interest to your son and daughter were made December 31, 1942, other than the partnership agreement? In other words, were there any bills of sale?

A. No. There was an assignment of an interest in the United Packing Company.

Q. That was in the partnership agreement, wasn't it? A. Yes, sir.

Q. I am asking other than the partnership agreement if there was any document of any kind or character executed other than the partnership agreement conveying any interest to your children?

(Testimony of Floyd J. Harkness.)

A. No. My legal advisors had advised that that was, and it so states in the agreement itself, that that was——

Q. I am not interested in that. I am just asking if there was any agreement other than the partnership agreement [85] making any transfer?

A. No, sir.

Q. And the real estate that went into the partnership, that was carried in the same manner as prior to December 31, '42?

A. There was no real estate involved in the transfer, as I recall. The real estate was acquired in 1943 in the names of all four partners. That is a matter of record in Fresno County.

Q. Have you changed your stationery to show that it isn't a sole proprietorship, Mr. Harkness?

A. We changed our stationery as soon as we got new stationery, but we continued to use up the old stationery in our files at that time until we could get the new stationery.

Q. The reason I asked, the stationery attached to Respondent's Exhibit M shows United Packing Company, Floyd J. Harkness, Owner. It was changed sometime after '44?

A. Is that an original letterhead or tissue copy?

Q. You will have to answer that question, I don't know.

A. That is a tissue copy. The original letterheads that went out to the business world were changed immediately.

Mr. Mather: That is all.

(Testimony of Floyd J. Harkness.)

The Court: Have you any redirect?

Mr. Ehrlich: Just a few questions, your Honor.

Redirect Examination

By Mr. Ehrlich:

Q. I introduced in evidence this morning, Mr. Harkness, a certificate of doing business under fictitious name. That was signed by all members of the partnership at the time you organized this partnership on January 1, 1943? A. It was.

Q. Now, that was published in a newspaper in Fresno County?

A. In the Daily Real Estate Reporter.

Q. And it was recorded as the document shows in the county records of the County Recorder?

A. It was.

Q. Mr. Harkness, I direct your attention to the partnership agreement dated December 31, 1942, and the provision with respect to the profits, distribution of profits. I am reading from Pages 3 and 4, Mr. Mather, part of the paragraph. It says:

“It is understood and agreed that first party is to receive for his said services a certain percentage of the net profits of said business to be agreed upon between all the partners herein from time to time as they may agree upon between themselves, and that the balance of the net income of said co-partnership shall be equally divided between all of the co-partners herein at such time or times as they may agree upon, provided, however, that any profits

(Testimony of Floyd J. Harkness.)

which third and fourth parties are entitled to receive shall be paid to first party and [87] applied by him first, to any payment which first party may have advanced to third and fourth parties together with interest thereon and the balance thereof, if any, shall be applied by first party in the payment of the promissory notes which the said third and fourth parties have executed in favor of said first party for the purchase price of their share in said co-partnership business.”

Was that followed out? A. It was.

Q. And the profits which accrued were first applied to interest, and the balance to principal?

A. That's right.

Q. Did you have any understanding with your son that he was to have no personal liability on the note? A. With my son?

Q. Yes. A. No.

Q. He was required to pay the note independent of the profits and losses of the United Packing Company? A. That's right.

Q. Did you have any understanding with your daughter that she was not to pay the note except out of profits? A. I did not.

Q. So that irrespective of the destiny of the United Packing Company co-partnership your daughter and son-in-law [88] had personal liability on the note? A. That's right.

Q. I direct your attention to the stipulation, Mr. Harkness, and in particular the year 1944, and I read this item—I am reading, Mr. Mather, from

(Testimony of Floyd J. Harkness.)

6-F, Page 1, year 1944: "Credit to increase capital to \$65,000, \$30,439.60; credit to increase capital to \$65,000, \$30,439.59."

That is under the capital account of Floyd J. Harkness, Sr., and Molly A. Harkness. Was that the contribution of yourself and your wife to the increase in the capital of the partnership in '44?

A. It was.

Q. And it is stipulated that this is a transcript of the books of account so that this increase was entered in the books of the co-partnership, your Honor.

Now, reading from Page 3 of Exhibit 6-F, it shows that as of December 31, 1947, you and Mrs. Harkness had as undistributed profits, \$385,367.58. That is correct, is it not? A. Yes, sir.

Q. I direct your attention to Page 4 of the stipulation, Floyd J. Harkness capital account, and I am reading from the year 1944, entry 1231, credit to increase capital, \$65,000, \$30,439.60. That was the contribution of your son, Floyd J. Harkness, Jr., to the capital account of the partnership in 1944, was it not? [89] A. Yes, sir.

Q. I direct your attention to 6-F, Page 5, still reading from the capital account of Floyd J. Harkness, Jr., which says, "Total capital 12/31/47, \$105,681.12."

That was the capital and undistributed profits of your son on the accounts of the United Packing Corporation, is that correct? A. That's right.

Q. I direct your attention to Exhibit 6-F, Page

(Testimony of Floyd J. Harkness.)

6. I am reading the year 1944, 12/31, and I am reading, by the way, from the capital accounts on the books of the corporation of William H. and Harriet Harkness Colgate, 12/31/44: "Credit to increase capital to \$65,000, \$30,439.60."

That was the amount that your daughter contributed on the books of the partnership to the partnership capital, is that correct?

A. That's right.

Q. I direct your attention to the same capital account of William H. and Harriet Harkness Colgate, Page 7, 6-F, "Total capital, 12/31/47, \$121,-650.11."

That is the total capital and undistributed profits credited to the credit of your son-in-law and your daughter on 12/31/47; is that correct?

A. Yes, sir.

Q. I direct your attention to the co-partnership agreement [90] of December 31, 1942, 11-K; attached to that exhibit is a financial statement which shows that the total capital of the co-partnership on 1/1/43 was the sum of \$138,241.61; is that correct?

A. Yes, sir.

Q. That is net after deducting certain liabilities which appear on this statement?

A. That's right.

Q. And the contributions by the partners to the capital were, F. J. Harkness, Sr., \$34,560.41; Mrs. Molly A. Harkness, Sr., \$34,560.40; Harriet Harkness Colgate, \$34,560.40; and F. J. Harkness, Jr., \$34,560.40.

(Testimony of Floyd J. Harkness.)

Is that correct? A. Yes, sir.

Mr. Ehrlich: That is all.

Recross Examination

By Mr. Mather:

Q. Mr. Harkness, why, if all this property that you had was community property when the agreement of December 31, 1942, was entered into, were the notes, Petitioners' Exhibits 16 and 17, made payable to you instead of one to you and one to your wife?

A. Well, we were operating under the community property rights of the State of California. You had a tissue copy of one of our second sheets there that shows myself as owner of [91] the business, and regardless of the fact that I was owner of the business, she had her community interest in it.

Mr. Mather: That is all.

Mr. Ehrlich: Any questions, your Honor?

The Court: No questions.

That is all, Mr. Harkness.

(Witness excused.)

The Court: Call your next witness.

Mr. Ehrlich: Mrs. Colgate, please.

Whereupon

HARRIET HARKNESS COLGATE

was called as a witness on behalf of the Petitioners and having been first duly sworn, testified as follows:

Direct Examination

The Clerk: State your name and address, please.

The Witness: Harriet Harkness Colgate, 520 Eye Street, Sanger, Fresno County, California.

By Mr. Ehrlich:

Q. Mrs. Colgate, you are the daughter of Floyd and Molly Harkness? A. I am.

Q. Floyd, Jr., is your brother? A. He is.

Q. William Colgate is your husband?

A. He is. [92]

Q. How long have you lived in Fresno?

A. All my life, 28 years.

Q. You were temporarily absent during a portion of '42, '43, and '44? A. Yes, I was.

Q. What is your age, by the way? A. 28.

Q. When did you become of age?

A. September, '41.

Q. September, '41? A. Yes.

Q. When did you graduate from USC?

A. June, '42.

Q. When were you married?

A. August, '42.

Q. And you are the Harriet Harkness Colgate who signed the partnership agreement of December 31, 1942? A. I am.

(Testimony of Harriet Harkness Colgate.)

Q. Mrs. Colgate, where were you when you signed the partnership agreement, do you recall?

A. In Columbus, Ohio.

Q. With your husband?

A. Yes, with my husband.

Q. He was at a——

A. He was at Columbus Quartermaster Depot there on [93] orders.

Q. Where were you when you signed the certificate of doing business under fictitious name? You are familiar with the document I mean?

A. I was in Columbus.

Q. You know what the document is, you are familiar with the document—withdraw that question.

Referring to this document which I am handing you, Petitioners' Exhibit, certificate of co-partnership, is that your signature, Mrs. Colgate?

A. Yes, it is.

Q. Where were you when you signed the document? A. Columbus, Ohio.

Q. The notary's certificate attached shows that it was notarized on the 28th of November of '42 in Franklin County, State of Ohio, acknowledged then.

Mrs. Colgate, during your childhood I assume you lived with your father and mother?

A. I did.

Q. How long a period of time did you live on the ranch outside of Fresno with them, about?

A. I believe about 10 years.

(Testimony of Harriet Harkness Colgate.)

Q. When did you first discuss with your parents, your father or mother, either one or both, this question of having an interest in the business which was being conducted by your [94] father under the fictitious name of United Packing Company?

A. Over a year before I signed it. It was something that had been talked in our family ever since I could understand the words "packing company," that someday we would be a part of United Packing Company.

Q. When you say "we," whom do you mean by "we"?

A. My brother and I.

Q. Those discussions had gone on periodically?

A. For years.

Q. With your father and mother and brother participating too?

A. Yes.

Q. And yourself?

A. Yes.

Q. Directing your attention to this document, Petitioners' Exhibit 11-K, which is the partnership agreement of December 31, 1942, when did these discussions crystallize? You said about a year prior to the time of signing.

A. Yes.

Q. You signed on December 31, or, you signed it in the autumn of 1942, around the end of the year?

A. Yes,

Q. You say you signed that sometime when? In the end of—

A. In November. [95]

Q. Don't be confused. I am talking now not about the certificate of doing business under ficti-

(Testimony of Harriet Harkness Colgate.)

tious name, but the partnership agreement. You signed it when? A. In March.

Q. March? A. '43.

Q. How long prior to the time you actually signed the partnership agreement, Petitioners' 11-K, did you have these discussions, to the best of your recollection?

A. Well, we discussed it.

Q. I say, when? Just answer when first.

A. Summer of 1942 and January of 1943.

Q. In the interim as well? A. Yes.

Q. You were married in August of '42. Will you relate with whom you had your first discussions regarding the partnership agreement?

A. Well, we discussed it before I was married.

Q. Who is "we"?

A. My father, mother, and brother. Then after I was married——

Q. But nothing crystallized at that time, just family discussions about participation of you and your brother in the United Packing business?

A. Yes. [96]

Q. Then you said in August of '42, did you have further discussions after your marriage or before? A. After our marriage.

Q. With whom were these discussions?

A. With my father and mother.

Q. Where were they?

A. They came back to Columbus, Ohio, in January of '43.

Q. You said you had some discussions in Au-

(Testimony of Harriet Harkness Colgate.)

gust of '42. Did you have any discussions then?

A. Yes, I was in Fresno.

Q. In August at the time of your marriage?

A. Before my marriage. I was married August 14.

Q. And you were in Fresno before that?

A. Yes.

Q. Had you discussed it with your father and mother? A. Yes, I had.

Q. Was your brother there or not?

A. No, he was in the Army.

Q. You don't recall seeing him at that time?

A. No, I did not.

Q. Did these discussions progress from August either conversationally or in writing between you and your parents? A. Yes, they did.

Q. When did you leave Fresno to join your husband? A. August 7, 1942. [97]

Q. You were married in Fresno?

A. No, I left Fresno August 7, 1942, and arrived in Petersburg, Virginia, I believe the 12th of August, and I was married on the 14th of August.

Q. In Petersburg, Virginia?

A. In Petersburg, Virginia.

Q. Where did you go from there?

A. We went to Columbus, Ohio.

Q. You and your husband?

A. Yes, on orders.

Q. How long were you stationed there?

(Testimony of Harriet Harkness Colgate.)

A. Approximately a year and a half.

Q. These discussions were with your parents while they were in Columbus, or as a result of correspondence between you? A. Yes.

Q. And you signed the partnership in March, to the best of your recollection, March of '43, the certificate of doing business in November of '42.

By the way, did you receive any documents, did you receive what purported to be an agreement of partnership between your father, your mother, your brother, and yourself while you were in Columbus and prior to the end of December, '42?

A. I did.

Q. Did you examine that document? [98]

A. Yes, I did.

Q. Who sent you the document?

A. I believe it came from United Packing Company office in Fresno.

Q. Was it transmitted by your father to you?

A. Yes, it was.

Q. Was there a letter with it? A. Yes.

Q. You haven't any of this correspondence, have you?

A. No, I haven't. We lived out of suit cases and in homes of other people, and we destroyed all our personal letters.

Q. You didn't keep any of the letters?

A. No.

Q. When you received this document—you haven't a copy of it any more, have you?

A. No, I don't.

(Testimony of Harriet Harkness Colgate.)

Q. Did you sign the document?

A. No, I did not.

Q. Did you have any objection to it?

A. Yes, there were several objections.

Q. What did you do? Did you convey those objections to your family? A. Yes, I did.

Q. Will you please explain to the Court just what you conveyed to your family and why you didn't sign the document? [99]

A. Well, there were several stipulations in it that I didn't agree to, and as my husband had signed the note with me, which made him as liable for this amount we borrowed, he and I discussed it, and we just didn't agree to them.

Q. Can you recall what you didn't agree to generally, not in detail, but generally so the Court may have that picture?

A. That my mother and father, Molly A. and Floyd Harkness, had too much power, and in case of death there were several stipulations that we didn't agree to.

Q. You wrote that to your family?

A. Yes, we did.

Q. Subsequently was a new document sent to you or did your father and mother bring you one, or what occurred?

A. I believe my mother and father came shortly after that, and we had a long discussion about it. In March, after lengthy correspondence about it, the document was sent in March which we did agree to.

(Testimony of Harriet Harkness Colgate.)

Q. And your father and mother called on you in January, '43? A. Yes, January, '43.

Q. And you discussed the situation at that time. Was your husband present?

A. Yes, he was.

Q. You and your husband while you were at camp with him [100] continuously discussed these provisions which you felt weren't fair to you in view of your husband having assumed the liability on the Note? A. Yes, we did.

Q. Subsequently, in March, a document was transmitted to you by mail, was it?

A. Yes, it was.

Q. That was satisfactory to you and you executed the document? A. Yes, we did.

Q. Will you please tell us in more detail of the conversations which preceded the execution of the document? I refer particularly to discussions with your father particularly as to the reasons why you were to participate in the partnership and so forth. If you please, give the Court that picture of your relation with your father and mother with reference to the situation.

A. Well, as I said before, it had always been understood that if he gave one of his children the opportunity to make something, to make a venture, that he would give the other an opportunity. In the summer of '42 when all this was coming to a head about the co-partnership, we all had discussed my making a venture into some other business such

(Testimony of Harriet Harkness Colgate.)

as the di Giorgio Farms that were selling, I think, for \$6 a share, and also my husband, though I was engaged to him and knew I was going to [101] marry him, he had talked of maybe going into this Rapid Harvest. I could have invested into that or Standard Oil.

At the outcome of this discussion, since my husband was more interested in this type of fruit business, it was decided to take the risk of that note in with the United Packing Company.

Q. I direct your attention to this agreement, the supplemental agreement which was signed on the 4th day of January, 1943, Petitioners' 12-L, and ask you if that Harriet Harkness Colgate is your signature. A. It is.

Q. This is the agreement under which your father received a salary of 75 per cent of the net income from United Packing up to the amount of \$100,000, and the other partners participated thereafter. Do you recall that document?

A. Yes, I do.

Q. Do you recall where you signed that?

A. Columbus, Ohio.

Q. Did you have any discussions with your father with reference to the salary which he was to receive?

A. Yes, we did, and my husband and I thought it was a just salary for his experience and being on the spot, and in a tight business like this during the war it took a long time to get letters back and forth, and his services were well worth that.

(Testimony of Harriet Harkness Colgate.)

Q. Were you interested, Mrs. Colgate, in having your husband become affiliated with this business? A. Yes, I was.

Q. And you had discussed his future after he was retired from the Army with him on many occasions? A. Very thoroughly.

Q. Did you have any discussions with your husband as to whether or not the funds necessary to make an investment in the co-partnership should come from any other source?

A. Yes, we did discuss that very thoroughly. My husband comes from a very wealthy family, and his father had told us that any venture that he might wish to take to get started into business, he would back him up 100 per cent.

We discussed that, but since I had already had this offer from my father to go into anything I wished, Standard Oil or anything, we decided to take that. We had legal counsel, and that was fine, so we took that.

Q. So you decided to borrow the money from your father? A. From my father.

Q. Not from Mr. Colgate's family?

A. No.

Mr. Ehrlich: I am trying to touch just a few points, your Honor, not to delay this matter unduly.

The Court: When you speak of borrowing money, I suppose you mean you have reference to what this \$34,000 was given [103] for? There was no money actually borrowed.

(Testimony of Harriet Harkness Colgate.)

Mr. Ehrlich: That is correct. I meant the note, your Honor, the obligation.

The Court: One-fourth interest in the partnership.

Mr. Ehrlich: The creation of the one-fourth partnership by the giving of the note. I was a little loose in my language there, I am sorry.

Q. (By Mr. Ehrlich): The only time you worked in the offices of the United Packing Company was for three months, your father testified, around June of 1942? A. Yes.

Q. After you had graduated from college and before your marriage?

A. Yes, that is true. But at the time that this all occurred, my husband was in the Army, and at that time there were very few officers that stayed in this country more than six weeks after they received their commissions. At that time, the year and a half, I never unpacked my suitcase, always planning that the next day or week he would receive orders and I would be back at my job at the United Packing Company.

Mr. Ehrlich: That is all.

The Court: Cross-examine.

Cross-Examination

By Mr. Mather: [104]

Q. You never did go back to your job at United Packing, did you?

A. No, I didn't. We have a son.

(Testimony of Harriet Harkness Colgate.)

Q. You spoke of investing your funds. What funds did you have in '42? A. This money.

Q. What money?

A. This promise that I took at his word that when he gave my brother an opportunity to make an investment, a risk, that he would give the same opportunity to me. If I had chosen to go to Rapid Harvest there would have been probably a check written; but since we chose, my husband and I, to go into this, there was no need.

Q. He never gave you any money at the time you executed the note, did he? A. No.

Q. You spoke of discussions that you had. Who were these discussions with?

A. What discussions do you mean?

Q. You spoke of discussions that you had about the creation of the partnership in 1942.

A. With my mother and my father.

Q. All right, just what was said and by whom?

A. It has been a long time and I can't remember the exact words at all. [105]

Q. If you will just come close.

A. Well, it was that it was the whole gist of what I have been saying.

Mr. Ehrlich: Well, repeat it. Mr. Mather is entitled to have your testimony.

A. (Continuing): Well, it was that I would borrow this money to purchase one-fourth interest in the United Packing Company; and with the understanding all along that my husband, as com-

(Testimony of Harriet Harkness Colgate.)

munity property, would be as liable as I and would ultimately come into active participation.

Q. (By Mr. Mather): That is the sum and substance of your conversations that you had in 1942?

A. Yes, that is the substance of it. It was always known that my brother would be given an opportunity to go into it. He worked in it ever since he was 15 and 16 years old.

Q. I think you testified that you didn't like the original document that was sent to you. Can you tell me any stipulation in that agreement, 11-K, that was put in there because of discussions you had with respect to the parts you didn't like in the first agreement?

A. Well, if I could find—it's in here that only two parties had to concur.

Q. Yes. A. And that was changed. [106]

Q. Is that the part you didn't like?

A. Yes, that is one of the parts.

Q. It wasn't changed until after '42, was it? It wasn't changed until the supplemental agreement sometime after '42 when your husband was taken in? A. I can't remember that.

Q. Well, now, give me another one.

A. Well, this part in here—I can't look through, but that we would get to purchase in case one of them passed away, the other interest.

Q. What part of that didn't you like?

A. Well, we just discused it and didn't agree to it.

(Testimony of Harriet Harkness Colgate.)

Q. What did you agree to?

A. In the stipulation?

Q. Well, what would be satisfactory to you about purchasing the interest if one person died?

A. Well, that we would—no one person would take over that whole part of it, we would have an equal division into it.

Q. Was the partnership agreement reformed in that respect? It is provided in the agreement, Mrs. Colgate, that if anybody wants to dispose of their interest they have to first offer it to the remaining partners? A. Yes.

Q. And that it will be sold to the remaining partners at book value? [107]

A. Uh huh (affirmative.)

Q. Now, that provision is in the instrument, isn't it? A. Yes.

Q. Is that the one you are referring to?

A. I believe so.

Q. The document that you have before you is purported to be a document as of December 31, 1942. Now, you didn't sign it until March of 1943?

A. March.

Q. I want to know if that document—do you know whether that document was signed by the other members in 1942?

A. I don't. I believe—I don't know, I am confused.

Q. You don't know whether it was or not?

A. I believe it was.

Mr. Ehrlich: Do you know?

(Testimony of Harriet Harkness Colgate.)

The Witness: I don't know, no.

Q. (By Mr. Mather): Do you know if there were any revisions in the document that was made in 1942 that was signed by the other members that you ultimately signed? A. Yes.

Q. Just what changes were made?

A. Well, the changes that I have said that we disagreed to.

Q. One is about if one of the parties died. I forget [108] just what you said with respect to that. Will you repeat it?

Mr. Ehrlich: The others should have a right to participate equally.

A. That no one person would be able to take over that fourth, that the other remaining, as it may be, the remaining three, would have a third of that one-fourth to them.

Q. (By Mr. Mather): What other provision?

A. About the concurring.

Q. Now, do you recall when you signed 12-L, that is about the salary?

A. What was your question again?

Q. Do you recall when you signed that?

A. You mean fixing Mr. Harkness'—

Q. When you put your signature. That shows that you signed your name down here.

A. This 31st day of December, '42.

Q. When did you sign this document?

A. I believe in November of '42.

Mr. Ehrlich: I think she is confused.

(Testimony of Harriet Harkness Colgate.)

Mr. Mather: I am trying to straighten her out if I can.

Q. (By Mr. Mather): This has to do with this partnership agreement about salaries that are to be paid to your father. [109]

A. That was in January.

Q. Well, the document is purported to be executed as of January 4, 1943, but you now tell me that you didn't like the agreement of partnership dated December 31, 1942, so you didn't sign it until March of 1943. What I am trying to find out is if you signed that supplemental agreement that is effective as of January 4, 1943, before or after you agreed to the articles of co-partnership that you didn't sign until March of '43.

A. I signed this before. We had so many discussions going back and forth in correspondence and such that I knew about this stipulation and I agreed to it before.

Q. Before you signed this partnership agreement?

A. Yes. It had been understood and talked about so much that I knew about that.

Q. Now, you aren't confused about another supplemental partnership agreement that was executed in 1945?

A. No.

Q. You remember that one, too?

A. Yes.

Q. That provided that three people could make changes?

A. Yes.

Mr. Mather: I think that is all.

The Court: Any further examination?

Mr. Ehrlich: No, thank you, your Honor. [110]

The Court: That is all.

(Witness excused.)

Mr. Ehrlich: Mr. Colgate, please.

Whereupon

WILLIAM HOYT COLGATE, JR.

was called as a witness on behalf of the Petitioners, and having been first duly sworn, testified as follows:

The Clerk: State your name and address, please.

The Witness: William Hoyt Colgate, Jr., 520 Eye Street, Sanger, Fresno County, Sanger, California.

Direct Examination

By Mr. Ehrlich:

Q. Mr. Colgate, where do you reside?

A. 520 Eye Street, Sanger, California.

Q. How long have you resided in Fresno County.

A. Approximately 20 years.

Q. When did you go into the Army?

A. March 6, 1941.

Q. Under what circumstances?

A. Well, at that time I thought, and according to the papers and everything, that fellows going into the Army then would go in for one year, and after the termination of one year you would be discharged.

Q. So you enlisted; is that right?

A. So I enlisted. [111]

(Testimony of William Hoyt Colgate, Jr.)

Q. Where were you stationed at that time?

A. I was stationed at Monterey, California.

Q. Where else after that?

A. After that I went from there to Camp Roberts on orders, and from there I went to San Luis Obispo.

Q. Were you ever stationed outside the State of California?

A. Then I went to Ford Ord, and from Fort Ord in, I believe it was the middle part of May, 1942, I was sent to Camp Lee, Virginia, Petersburg, Virginia, on orders.

Q. How long did you remain there?

A. I left there in, I believe it was in October of 1942.

Q. Where did you go from there?

A. I was sent on orders to Columbus Quartermaster Depot, in Columbus.

Q. By the way, you enlisted as a private?

A. I did.

Q. Where did you go from Columbus, Ohio?

A. From Columbus, Ohio, I was sent, I believe it was in 1944, in March, I believe, I was sent to the Commander General Staff School, Fort Leavenworth, Kansas.

Q. How long did you stay there?

A. I stayed there until June, and from there I was sent back to Camp Lee, Virginia. [112]

Q. How long did you remain there?

A. I stayed there until August, when I was sent

(Testimony of William Hoyt Colgate, Jr.)

to the Woodrow Wilson General Hospital at Stanton, Virginia.

Q. You became ill in the service?

A. Yes, I did.

Q. How long were you in the service?

A. A little over three and a half years.

Q. When were you discharged?

A. I was given orders to proceed home on terminal leave in October of 1944, and my terminal leave ended and I was retired in January, 1945.

Q. You received a medical discharge from the service?

A. I did, medical discharge.

Q. And you actually retired then in January, '45?

A. Yes.

Q. When you said you came home, did you mean you went to Fresno County?

A. To Fresno, yes.

Q. Harriet Colgate is your wife, is she not?

A. She is.

Q. Prior to your marriage, how long had you known your wife, approximately?

A. Since about 1937.

Q. By the way, at the time you retired you were medically discharged from the service, what was your rank? [113]

A. I was a captain.

Q. What branch?

A. Quartermaster Corps.

Q. When were you married, Mr. Colgate?

A. August 14, 1942.

Q. At Camp Lee, Petersburg, Virginia?

A. Petersburg, Virginia.

(Testimony of William Hoyt Colgate, Jr.)

Q. You and Mrs. Colgate reside in Sanger, Fresno County, at the present time?

A. We do.

Q. And Mr. Floyd Harkness, Sr., is your father-in-law, is he not? A. Yes.

Q. How long have you known Mr. Harkness?

A. Approximately nine years, I would say.

Q. And Mrs. Harkness is your mother-in-law, and you knew her approximately the same length of time? A. Same time.

Q. You were married in August of '42. Do you recall when you first discussed the formation of the partnership in which your wife became a quarter owner? I refer to the partnership between your father-in-law, mother-in-law, brother-in-law, and wife. A. Would you repeat that question?

Q. Do you remember when you had discussions concerning [114] that? A. Yes.

Q. When did you first discuss it with your wife?

A. Well, when she came back there and we got married, that was among the first things we started to discuss.

Q. Did she initiate the subject with you?

A. No, I had always—well, it came about that I had always been interested in agriculture and I always wanted to get into it. Then she brought up this opportunity that had been offered.

Q. What did she say to you at the time, in substance.

A. Well, in substance, she had been promised

(Testimony of William Hoyt Colgate, Jr.)

this, some money from her father, equal to whatever was given to her brother, and we could more or less invest that as we saw fit.

Q. Did you and Mrs. Colgate discuss this matter at length? A. We did.

Q. The advisability of your wife going into the partnership with her father and mother and her brother? A. We did.

Q. Can you give us some more of the details of the discussion that you had?

A. Well, I knew that when I got out of the Army that we would want to go into something, and the discussion more or [115] less was whether we at that time wanted to borrow that much money and go in debt for it or whether we should wait until I was retired from the Army.

Q. Were you familiar with the business conducted by your father-in-law?

A. I was familiar to the extent that I had always heard about him and the United Packing Company where I worked at Peerless Pump Company before I went into the Army.

Q. By the way, where did you go to school?

A. Fresno State College.

Q. Had you worked at the Peerless Pump Company during the periods that you——

A. I worked at Peerless Pump Company during two summers and then a period for about, I would say, nine months.

Q. After you quit college?

A. After I quit college, yes.

(Testimony of William Hoyt Colgate, Jr.)

Q. Did you discuss in these discussions with your wife—did the provisions of the proposed partnership agreement come up?

A. They did, definitely.

Q. And you knew, did you not, that in order for your wife to participate in the partnership it would be necessary for you to sign a promissory note?

A. I did, and at the time I didn't know whether to sign the note and go into debt to Mr. Harkness or borrow it [116] from my own father. After lengthy discussion between my wife and myself we decided that I might be going overseas and it might be best to borrow it from her father, which we did.

Q. Your wife has testified to certain provisions of the proposed partnership agreement which were objectionable to you and herself. Do you recall those discussions?

A. Well, I believe one of them was that in case of a death of one of the partners as it stood then the partnership would fall back to Mr. and Mrs. Harkness, which, in my position, in case it was my wife, wouldn't have been a very good move.

Q. That was objected to and finally straightened out in accordance with the existing contract?

A. That's right.

Q. Did you and your wife have any discussions regarding the policy of the partnership of allowing the profits to remain undistributed in the business?

A. Well, we had discussed that for some time,

(Testimony of William Hoyt Colgate, Jr.)

but—you mean increasing the capital of the company? We wanted to do that because heretofore every time Mr. Harkness hired a key man to take a district or something he would borrow or work on a percentage deal, and at the end of the year he would take his percentage and his salary and withdraw it from the company.

Q. And you were perfectly satisfied to sign commitments to the effect that the profits should remain in the business so [117] that the capital account could increase?

A. I was. I was in the Army and had no use for it.

Q. So as to permit the business to grow.

Mr. Mather: Now, Mr. Ehrlich——

Mr. Ehrlich: I am sorry, I withdraw that. I am sorry, your Honor.

Q. (By Mr. Ehrlich): Were there any discussions as to other possibilities of investment with your wife? A. Oh, definitely.

Q. Will you please give the Court the substance of those discussions?

A. Well, we discussed all kinds of investments, and I had an offer from the Rapid Harvest Company of when and if I ever got out of the Army that I could go to work there at a very good salary. And then also, with this money that she supposedly could borrow, whether we should invest in stock at that time or hold it or go into the United Packing Company, which we ultimately did.

(Testimony of William Hoyt Colgate, Jr.)

Q. You said you worked for the Peerless Pump Company. What was the nature of the activities that you engaged in while working for them?

A. Well, I started there as an apprentice and finally worked up to where I was allowed to go out and work with the crews. We traveled all over the San Joaquin Valley installing [118] pumps, and as far as agriculture is concerned we had to know what type of crop was going to be grown, what size pump to install, how big a head of water they wanted, which way the water would flow, and we had to know everything that the farmer was going to grow in regards to irrigation.

Q. And you lived there, you said, practically all your life?

A. I have; about 20 years, yes.

Q. You returned from the Army in October, '44, is that correct?

A. Yes, I did.

Q. When did you start working for United Packing, actively working as an employee?

A. Actively working, I think I was home, got my suitcase unpacked, and about four days I was on the road.

Q. When you say "on the road" you were working for—what was the nature of your work?

A. At that time Mr. Sorensen, that was right at the end of the 1944 season, and I believe we were in Emperors at the time, and just about three weeks to go—

Q. By "Emperors" you mean grapes?

A. Emperor grapes, yes. I traveled around with Mr. Sorensen for the remaining three or four

(Testimony of William Hoyt Colgate, Jr.)

weeks of the season until the packing house closed.

Q. Then you received some \$450 or thereabouts salary [119] for the work for those three months?

A. I did, after going with Mr. Sorensen for two or three weeks until he just about was through. I mean, he didn't come around the packing house any more. I went down to the ranches and worked on the ranches.

Q. Mr. Sorensen retired from United Packing in January of 1945, did he not?

A. He did, but he didn't come around the sheds much after the grape deal was over.

Q. I understand. Now, Mr. Colgate, you worked for United Packing in 1945, did you not?

A. I did.

Q. What arrangements were made for your compensation at the time?

A. At that time I believe we were under the Wage Stabilization Law or Order, whatever it was, that a field man was allowed \$250 a month, and I believe a small percentage, for which I agreed to work.

Q. By the way, I direct your attention to this agreement—did I give you the 1945 agreement?

Mr. Mather: It is attached to the stipulation.

Mr. Ehrlich: I don't seem to be able to place my hands on it.

Mr. Mather: It is attached to the stipulation, Exhibit 3-C.

Q. (By Mr. Ehrlich): I direct your attention

(Testimony of William Hoyt Colgate, Jr.)
to Exhibit 3-C—no, that isn't it. I wanted the supplemental agreement of January.

I have a copy here. I direct your attention to a document entitled, "This supplemental agreement dated the 11th day of January, 1946," signed by, or purported to be signed by Floyd Harkness, Molly A. Harkness, Floyd Harkness, Jr., Harriet Harkness Colgate, and William H. Colgate, Jr. Do you recall that document? A. I do.

Q. Will you relate to the Court the circumstances under which this agreement was signed? By the way, your Honor, this is the agreement where Colgate became formally a party of the partnership to participate with his wife as her husband, having a quarter interest.

Will you please relate the circumstances to the Court?

A. You mean the document, describe the document?

Q. No, relate the circumstances under which it was signed. Do you recall when it was signed?

I am sorry, your Honor, he became a partner on the 16th day of January, 1945, and I think that is in the stipulation.

Mr. Mather: Exhibit 8-H. [121]

Mr. Ehrlich: Exhibit 2-B, Mr. Mather. No, I will take it from the stipulation.

Q. (By Mr. Ehrlich): I am directing your attention to this supplemental agreement between your father, your mother, your brother-in-law, your wife, and yourself.

(Testimony of William Hoyt Colgate, Jr.)

Do you recall the circumstances under which this supplemental agreement was signed wherein and whereby you became a partner of the United Packing Company?

A. And I participated in my wife's one-fourth interest.

Q. That is correct. When was that signed? Do you remember? Around this date that it bears?

A. Let's see. That was signed, I believe, in January, 1945, I think.

Q. It bears the date of the 16th day of January, 1945. Did you do some work for the United Packing during January, 1945? A. I did.

Q. I mean during the year 1945.

A. I did.

Q. And you devoted your services exclusively to that?

A. Exclusively to the United Packing Company.

Q. You received for your services for that year some \$5,375, is that correct?

A. That's right. [122]

Q. And that was provided for in the supplemental agreement? A. That's right.

Q. Now, what did you do during the year 1945?

A. What did I do?

Q. Yes, what was the nature of your service?

A. Well, I was in complete charge of what we call the Sanger-Clovis—we didn't have the Parlier Shed then, the Sanger-Clovis areas. I was just General Manager of the whole show out there.

Q. Of that district?

(Testimony of William Hoyt Colgate, Jr.)

A. Of that district, hiring and firing, shipping the cars, and the complete run of the outfit.

Q. I direct your attention to an agreement dated the 11th day of January, 1946, signed by the members of the partnership, fixing the participations of the partners. Do you recall the execution of that agreement? A. Yes, I do.

Q. During the year 1946 you rendered services to the partnership? A. I did.

Q. What was the nature of the service you rendered? A. Exactly the same as in 1945.

Q. And your participation, your salary for the year 1946 was the sum of \$46,554.79? [123]

A. I believe that is correct.

Q. That was based on a percentage of the profits in that portion of the business in which you were active?

A. That's right, 25 per cent of the Clovis and Sanger deals.

Q. That is as appears in the contract which was signed by the members of the partnership?

A. 1946, right.

Q. I direct your attention to an agreement which was signed the 24th day of January, 1947, signed by the members of the partnership. A. Yes.

Q. Do you recall that? A. I do.

Q. And that in turn provided for the participation of your father-in-law, your brother-in-law, and yourself? A. That's right.

Q. What did you do that year?

A. Same thing.

(Testimony of William Hoyt Colgate, Jr.)

Q. Same type of work?

A. As in 1945 and 1946.

Q. 1947 now we are talking about.

A. And 1947.

Q. And you received, it appears in the stipulation, for your services, the sum of \$35,928.45. [124]

A. I believe that is right.

Q. That represents, as it calls for in the contract, your 25 per cent of the profits of the particular operation which you were managing?

A. Of the Clovis and Sanger Districts, yes.

Q. That is what you were managing for the partnership.

During the year '48 you worked for the United Packing? A. Definitely.

Mr. Ehrlich: I think that is all.

The Court: Cross-examine.

Cross-Examination

By Mr. Mather:

Q. Mr. Colgate, at the time you executed Petitioners' Exhibit No. 17, which is a promissory note, had you seen a financial statement of United Packing Company?

A. I didn't see it, but I had verbally been told what it was.

Q. You knew that their assets consisted of \$100,000 in cash, didn't you?

A. I believe it was \$130,000, some odd, yes.

(Testimony of William Hoyt Colgate, Jr.)

Q. Cash was \$100,000, and \$38,000 was other property. A. That's right.

Q. Did you know what their income had been for the year 1942? [125] A. I did.

Q. Around \$141,000?

A. Somewhere in there.

Q. It wasn't much of a decision on your part to take a 25 per cent interest by executing a note, was it?

Mr. Ehrlich: Isn't that an argument?

Mr. Mather: I am just asking him. You asked what his decision was. This is cross-examination.

A. No, it wasn't.

Q. (By Mr. Mather): You would be glad to enter into those agreements most any time, wouldn't you?

Mr. Ehrlich: Well, now, Mr. Mather, if they turned out as well as this one, I would say so.

A. Yes, I would.

Q. (By Mr. Mather): What was your position with the pump company in '41?

A. I guess you would call me an assistant foreman of one of the field crews.

Q. What was your approximate salary?

A. Well, it ranged between \$150 and \$200, because the crews worked by the hours, and it depends on whether we had a good week or it was a rainy day, or something like that, that we didn't work

Q. Was that company owned by some of your relatives? A. No.

Q. You don't contend that you were a member

(Testimony of William Hoyt Colgate, Jr.)
of this partnership in our taxable year 1943, do you, Mr. Colgate?

A. Well, I believe I was in a sense of the word.
Mr. Mather: You think you were.

That is all.

Mr. Ehrlich: Nothing further.

The Court: We might take a recess.

(Short recess.)

The Court: Proceed, gentlemen.

Mr. Ehrlich: I have a couple of questions of the witness.

Redirect Examination

By Mr. Ehrlich:

Q. Mr. Colgate, you testified that the original partnership agreement that was sent you was unsatisfactory for the reason that in the event of the death of a partner the interest went to the father or mother. Did you discuss that with counsel at camp?

A. I did.

Q. Do you remember the names of the attorneys you discussed it with? Were they in the service with you, by the way?

A. Yes, they were. They were officers. Robert Bechtol [127] from Lincoln, Nebraska, Donald Ziegel from Eaton, Ohio, and Olin K. Petefish, from Lawrence, Kansas.

Q. They were attorneys in civilian life?

A. Yes, they were.

Q. And you discussed this document with them?

A. I did.

(Testimony of William Hoyt Colgate, Jr.)

Q. And your wife also? A. Yes.

Mr. Ehrlich: That is all, your honor.

Mr. Mather: That is all.

The Court: That is all.

(Witness excused.)

Mr. Ehrlich: Mr. Harkness.

Whereupon

FLOYD JAMES HARKNESS, JR.

was called as a witness on behalf of the Petitioners,
and having been first duly sworn, testified as follows:

The Clerk: State your name and address, please.

The Witness: Floyd James Harkness, Jr., 1904
Harvard, Fresno, California.

Direct Examination

By Mr. Ehrlich:

Q. How long have you resided in Fresno County,
Mr. Harkness?

A. All my life, approximately 31 years. [128]

Q. Floyd J. Harkness, Sr., is your father, and
Molly Harkness is your mother? A. They are.

Q. Harriet is your sister? A. Yes, sir.

Q. William Colgate is your brother-in-law?

A. Yes, sir.

Q. You are familiar with the articles of co-part-
nership that have been introduced in evidence, Peti-
tioners' Exhibit 11-K? A. I am, sir.

Q. When did you graduate from college?

(Testimony of Floyd James Harkness, Jr.)

A. June, 1941.

Q. And you had been deferred by the draft board to permit you to complete your education?

A. I had.

Q. Upon graduation from college, what did you do?

A. I immediately went to work for the United Packing Company.

Q. Had you worked previously for the United Packing Company?

A. Yes, sir, on and off for almost eight years, I believe it is.

Q. It was organized in 1937?

A. Well, prior to that. [129]

Q. You had worked for the United Packing Company, consisting of your father and Mr. Jasper?

A. Mr. Jasper, yes, sir.

Q. And after your father and Jasper dissolved and your father conducted the business as co-proprietorship you worked for him?

A. Yes, right afterwards for a considerable length of time.

Q. As I understand it, in June, '37, after school was over, you worked for your father at that time.

A. Yes. I was going to Fresno State College, started my vacation in June of that year, and instead of going back to college courses that fall, I remained and worked with my father in the United Packing Company, handled several areas for him.

Q. Is it correct to state that you worked every

(Testimony of Floyd James Harkness, Jr.)

summer since '34 in the activities in which your father was interested?

A. Yes, sir. I worked a full three months every year.

Q. You worked three months every year?

A. Yes, sir.

Q. And in all phases of the operations?

A. Yes, sir.

Q. What did you do during that seven-months period between June, '37, and January, '38? [130]

A. I worked in the packing plants various capacities in various packing houses. I ended up running the Exeter packing shed in Tulare County where we packed Emperor grapes. But I believe we packed tomatoes that year, and I operated that. I believe that was the year.

Q. Were you compensated for your services?

A. Certainly, yes, sir.

Q. Directing your attention now to the year 1941, you say you worked the rest of that year after graduating from Fresno State College?

A. Yes, sir.

Q. You worked for United Packing?

A. Yes, sir.

Q. What did you do during that period until the end of the year?

A. I did a little of everything for the company that year, sir.

Q. You say "the company." You mean——

A. United Packing Company. The first operation was on the west side in Firebaugh, where we

(Testimony of Floyd James Harkness, Jr.)

were growing carrots and canteloupes. I did all the office work for the majority of it in Firebaugh besides supervising part of the growing.

When that deal was over I went into the grapes. The deals sort of coincide; one is over and then the other begins. [131]

Q. And you received a salary, and did you have a percentage deal?

A. Yes. All I could get was five per cent that year.

Q. What salary did you receive?

A. The same as, I beleive, several other of our field men, \$150 a month, I believe the figure was.

Q. And your participation, am I correct, was approximately—your five per cent participation in your share of the deal was about \$910.41?

A. I believe that figure is correct, sir.

Q. When did you enter into the service.

A. January 12, 1942.

Q. At the time you entered the service you had been deferred by the draft board on the ground that you were in an essential occupation?

A. I had been previously, yes, sir.

Q. Had you had any discussions with your father at the time you left college with reference to your going into business with him?

A. Yes, sir, I had.

Q. Will you please state the substance of those conversations to the Court?

A. I had asked immediately upon getting out of college and going back to work for the United

(Testimony of Floyd James Harkness, Jr.)

Packing Company, that I be given an opportunity of becoming a part owner of the company [132] at that time and sharing in the profits of the company. However, we had at that time—I say “we” because I have been associated with the company for all my life, I mean, heard of it and everything—we had working arrangements with our Sales Manager, Claude Steiger, field men all over the valley, for various percentage deals, and my dad just couldn’t see fit at that time to let me in for more than five per cent. There wouldn’t have been anything left for my mother and father.

Q. Did he tell you that at the time?

A. Yes, sir. We talked of that often because I not only was in the field, but put in a part of every day and evening in our offices at Fresno, and we discussed it quite often.

Q. When were you discharged from the service, Mr. Harkness?

A. I was released from active duty and went on terminal leave, I think it was about the 6th of January, 1946.

Q. You enlisted as a private? A. Yes, sir.

Q. What was your rank when you came out?

A. Major in the Air Corps, sir.

Q. How long were you in the United States while you were in the service? From when till when?

A. I was in the United States for approximately two [133] years, from January 12, ’42, the day I

(Testimony of Floyd James Harkness, Jr.)

enlisted, until I departed for overseas duty December 23, 1943.

Q. Where were you stationed the rest of the time? A. India, China, and Burma, sir.

Q. You were in India, China, and Burma from December, '43, or thereabouts, until the end of 1945?

A. Just about two years, sir, and I returned from overseas duty in December, '45, took a couple of weeks in the mechanics of the Army to get me out.

Q. Upon your discharge from the Army you were in Fresno? A. Repeat that, sir.

Q. When you were discharged from the Army you were in Fresno at the time, at the end of your terminal leave. You were in Fresno, as a matter of fact, from January, '46.

A. Yes. My terminal leave was from January until April, but all that time I was working for United Packing Company.

Q. As soon as you returned to Fresno you started working for United Packing immediately, is that correct? A. Yes, sir.

Q. And you have worked for United Packing ever since? A. Yes, sir.

Q. That includes '46, '47, and '48?

A. Includes up to the present time, sir. [134]

Q. Now, getting back to this conversation with your father, at the time you worked for him during June to December of 1941, he stated to you that he couldn't at that time permit you to participate. Did you have any conversations regarding your future

(Testimony of Floyd James Harkness, Jr.)

relations with the business operated by your father and mother? A. Yes, sir.

Q. You did have some conversation about it?

A. Yes, sir.

Q. About when, during that period?

A. Yes, sir. I was living with them. I was unmarried, and I talked to them very often.

Q. About your future relations with the business? A. Certainly.

Q. What was the substance of the conversations?

A. Well, inasmuch as most all of our field men were on a year-to-year basis, it was my understanding and a promise from my mother and father that at the conclusion of 1941 I would be allowed to purchase an interest in the United Packing Company, because my father and mother at that time could make other arrangements for the following year with the other employees, allowing larger percentage to be sold to me.

Q. I direct your attention to Petitioners' Exhibit 11-K, the partnership agreement of December 31, 1942. When did the ideas as to the signing of an agreement crystallize between you [135] and your father and mother?

A. Well, we had been talking for a long time of it, but the actual, as you say, "crystallization" occurred during the summer and early fall of '42.

Q. Where were you stationed at that time?

A. Over here in Marin County at Hamilton Field.

Q. How long were you at Hamilton Field?

(Testimony of Floyd James Harkness, Jr.)

A. Around 13 months.

Q. From when to when?

A. November, 1942, until I——

Q. Went overseas?

A. Departed, left there and flew to Miami, Florida, to go overseas.

Q. During that period you visited continuously in Fresno? A. Yes, sir.

Q. You were there——

A. Not continuously, but frequently.

Q. Frequently you visited your family, and the discussion of these family affairs, participation in the business, took place, is that correct?

A. Yes, sir. I both visited with them and with the business. I mean, I was home during the shipping season.

Q. Did you participate at all in the business activities?

A. Not formally, but on just about every visit home I [136] was in the office and at the various packing plants and so forth.

Q. You talked to your dad about the conditions of the business?

A. Dad and our other employees, yes.

Q. That was while you were in the service?

A. Yes, sir.

The Court: That was in '42?

The Witness: That was in '43, sir.

The Court: '43?

The Witness: Yes, sir.

The Court: I thought he asked you about '42,

(Testimony of Floyd James Harkness, Jr.)

The Witness: Pardon, I understood that to be '43.

Q. (By Mr. Ehrlich): In '42, where were you?

A. In '42 after my enlistment I went to Shepherd Field, Texas, and then was transfered in March, I believe it was, to Fort Logan, Colorado. Then in May, I don't recall the exact date, I was transfered to Presque Isle, Maine, in the Air Transport Command up there, and then in August, I beleive it was, I was transfered to the Officer Candidate School in Miami Beach, Florida.

Q. Then——

A. Was commissioned in late October and was assigned to Hamilton Field.

Q. You say you came to Hamilton Field in December? [137]

A. No, in November.

Q. November of '42?

A. Yes. I had a few days travel time to spare, so I spent them at home, four or five days around the 8th or 9th of November until the 13th or 14th, some such date.

Q. You are familiar with this certificate of co-partnership, the articles of co-partnership, the certificate of co-partnership transacting business under fictitious name is dated the 12th day of November, 1942, and the acknowledgment of notary public indicates that it was signed by your father, your mother, and yourself on the 12th day of Nevember, 1942. Is that about right?

A. Yes, that's right. And I was in Fresno at

(Testimony of Floyd James Harkness, Jr.)

the time that was drawn by our attorney, and I signed it at that time.

Q. I direct your attention to Petitioners' Exhibit 11-K, partnership agreement dated December 31, 1942.

A. Yes.

Q. You are familiar with that document?

A. Yes, sir.

Q. Do you recall about when you signed that document, approximately?

A. It was around the end of the year.

Q. On one of your visits to Fresno, or was that sent to Hamilton Field? [138]

A. No, there was a couple of documents involved there. It was drawn first, and I had agreed to most all the terms of it; however, my sister and brother-in-law did not agree, and I believe it was a little after the first of the year, probably in February or along in there when it was finally drawn and actually acknowledged by signatures by all parties concerned, including my own.

Q. You don't recall whether you signed it in Fresno or Hamilton Field?

A. I believe in Fresno, sir.

Q. Directing your attention to the River Ranch, you are familiar with the ranch which the Sorensens and the United Packing acquired 50-50?

A. Very familiar with it, sir.

Q. That was acquired from—who was it acquired from? Do you remember the name of the individual?

A. Yes, F. Haranaga.

Q. He was a Japanese?

A. Yes, sir.

(Testimony of Floyd James Harkness, Jr.)

Q. Do you recall when that was acquired?

A. It was——

Q. The second day of February, 1943. I have the deed here. A. Yes, sir.

Q. Were you consulted about the acquisition of that? [139] A. Yes, I was.

Q. Who consulted you? A. My father.

Q. What was the nature of the discussion that you had with your father?

A. As to the advisability of buying it or not. He knew that I was familiar with the ranch and had been on it many times for five or six years prior to that time when he handled the crops from that ranch.

Q. You handled this?

A. United Packing Company. I am speaking of "we" as United Packing Company at that time.

Q. United Packing Company had been handling the produce grown on this ranch? A. Yes.

Q. That had been part of your functions while you had been active with United Packing?

A. Yes. I had been on the ranch and knew the crops and how valuable they were to the rounding out of our United Packing Company shipping program.

Q. And you testified and the Court properly corrected us that these activities which you have testified to, I mean your discussions with your family and visits to the office and to the packing plants, the operations of the United Packing Company occurred during your temporary stays in Fresno

(Testimony of Floyd James Harkness, Jr.)

while [140] you were on leave from Hamilton Field during the year 1943?

A. I did testify to that. That is a fact, sir.

Q. Those talks occurred during '43?

A. Yes, sir.

Q. For the 13 months while you were at Hamilton Field?

A. November to the following December, yes, sir.

Q. From November, '42, to December, '43, and just before you left for India?

A. That's right, sir.

Q. And you had similar conversations, as I understand, with your father about problems that arose in connection with the United Packing business activities during that particular time?

A. I did, quite extensively, yes, sir.

Q. When you were in Fresno, did you live at home? A. Yes, sir.

Q. By the way, at the time you entered into the service there was owing to you the sum of \$1,326.73 for part of the compensation you were entitled to as a result of your activities with your father's enterprise, is that correct, with United Packing?

A. Yes, sir.

Q. That was credited in the transaction whereby you acquired the one-quarter partnership interest under the partnership [141] agreement for \$34,500?

A. Well, mine was \$33,000 something, I believe.

Q. It was \$34,560.40 less this amount of \$1,326.73, which was credited to the original purchase price; is that correct? A. That is correct, sir.

(Testimony of Floyd James Harkness, Jr.)

Q. And you gave your father this note for—I am showing you Petitioners' Exhibit 16, promissory note for \$33,168.35?

A. Yes, that would be for the balance that I owed.

Q. To acquire the partnership interest, the other portion being paid by you by your father crediting—

A. The money I had left with the United Packing Company.

Q. Toward the purchase price of your interest in United Packing? A. That is correct, sir.

Q. At that time, Mr. Harkness, I mean during the year '42, you had engaged in several other deals where independent of the United Packing you had made approximately between \$4,000 and \$5,000; is that correct? A. That is correct, sir.

Q. Those were deals of similar character as those conducted by United Packing. I mean, they were fruit and vegetable deals, grape deals? [142]

A. Yes, it's the field with which I was familiar, and therefore I would invest in something I knew.

Q. Individually you invested in it?

A. Yes, sir.

Q. And as a result of those deals, you had a few thousand dollars independent resource, is that correct? A. Yes, sir.

Q. At this time you were not married, were you, Mr. Harkness? A. No, I was not, sir.

Q. You stated that you had no objection to the original contract as submitted.

(Testimony of Floyd James Harkness, Jr.)

A. No material objection. I appreciated my sister and brother-in-law's viewpoint on it, but I had agreed verbally that the articles of co-partnership were substantially what my ideas were, and what I understood all along.

Q. You didn't see your sister very often during that period, did you?

A. No, sir; I didn't see her at all, I don't believe.

Q. You didn't see her at all?

A. I didn't see her for a good many years right there at that time.

Q. During this period had you had any writings between you and your parents during the year '42 while you were away, with reference to the partnership? [143]

A. Yes, sir.

Q. Did you keep any of those letters?

A. No, sir.

Q. Discussing the various provisions and what was being considered, is that correct?

A. The letters and correspondence, yes, sir.

Q. Let me ask you this: when, in November of '42, you signed the certificate of doing business under fictitious name, Petitioners' 15, you were in Fresno, at that time you discussed at length and in minute detail the provisions of the contract, did you?

A. That is, the question was in November of '42? Yes, sir.

Q. Did they present you with a proposed draft at that time, do you remember?

A. I don't believe the final document had been

(Testimony of Floyd James Harkness, Jr.)

drawn, just substantially what we were going to include in it. I don't remember, I don't believe Mr. Hansen had drawn the document at that time, the final one.

Q. Where were you on or about January, 1945?

A. January of '45 I was in Bengal, India, sir.

Q. Had you previously to that time been consulted with respect to the participation of your brother-in-law in the United Packing Company?

A. Oh, yes, sir, by correspondence, and when I was in [144] Hamilton Field in '43 it was understood we understood that when he got out he was going into the company.

Q. And you were then aware of the fact that when he retired from the armed service that he would become a partner participating with your sister in a one-quarter interest? A. Yes, sir.

Q. Do you recall where that supplemental agreement of January, 1945, was signed, wherein and whereby Mr. Colgate became a member of the partnership? A. What was the question, sir?

Q. Do you remember where you signed that document, the document I am referring to, the agreement?

A. When my brother-in-law came in the business, is that the one you are speaking of, sir?

Q. Do you recall when you signed that? It is dated the 16th day of January, 1945.

A. Why, I signed that later, sometime after that particular date. It was mailed to me overseas inas-

(Testimony of Floyd James Harkness, Jr.)

much as it materially changed the partnership and they wanted me to actually approve any entry of a fifth party in the partnership.

Q. Where did you sign it, do you recall?

A. I signed it while I was in India, sir.

Q. This was sent to you and you signed this while you were in India, is that correct? [145]

A. Yes, sir, although I had left authority at home with my father that in any case that arose that he had my power of attorney in case it was needed in any emergency.

Q. But they sent that document to you and you signed it in India sometime after January 16, 1945?

A. Yes, sir.

Q. In a period of 30 or 60 days, would you say?

A. It took considerable time to get mail over and back, yes, sir.

Q. But within a reasonable time after that date?

A. Yes, sir.

Q. Mr. Harkness, I direct your attention to the year 1946. The stipulation indicates that you were—withdraw that.

I direct your attention to the year 1946. On the 11th day of January, the members of the partnership, which consisted of members of your immediate family—

A. Five of us, yes.

Q. —and your brother-in-law, executed an agreement dated the 11th day of January, 1946, which provided for the compensation which your father, your brother-in-law, and you were to receive. Do you recall that?

A. Yes, sir.

(Testimony of Floyd James Harkness, Jr.)

Q. When did you commence working for the United Packing Company after your discharge?

A. Immediately, sir.

Q. That is, in January, '46? A. Yes, sir.

Q. This agreement is dated the 11th day of January, 1946? A. Right after I returned.

Q. This agreement provides for a salary which you were to receive from the United Packing, does it not? A. Yes, sir.

Q. That was on a percentage basis?

A. Yes, sir. It was on the same basis that prior employees with the United Packing Company shared. I had taken the same percentage Mr. Steiger did.

Q. It appears here that that was 25 per cent.

A. Yes, sir.

Q. What did you do for United Packing? What were your duties during the year 1946?

A. I was General Assistant to my father in the over-all management of the entire business, and in particular handled three areas.

Q. What areas?

A. Madera County operation where we packed plums and nectarines and peaches, and actually grew some nectarines and peaches; and then the canteloupe shipping operation in Mendota, west of Fresno, and at the culmination of the canteloupe deal, [147] the Tulare County operation of the United Packing Company where we shipped grapes on into about Thanksgiving time.

Q. The stipulation sets forth that for your serv-

(Testimony of Floyd James Harkness, Jr.)

ices rendered to the United Packing Company during the year 1946 you received the sum as compensation of \$57,984.75; is that correct?

A. Yes, sir. It is 25 per cent of the net profits, I believe.

Q. I direct your attention to the year '47. You performed services for the United Packing?

A. Yes, sir.

Q. What was the character of the service?

A. I believe they corresponded just about exactly to '46.

Q. And you received in your participation—your salary was in the form of a participation in the net profits?

A. Yes, sir.

Q. The stipulation shows that for the year 1947 you received \$53,635.13; is that correct?

A. As my salary, yes, sir.

Q. As your salary. Now, you are still employed by the United Packing Company?

A. Yes, sir.

Q. And you worked during the entire year '48? What was the nature of your services? [148]

A. As Assistant General Manager.

Q. The same as presently?

A. The same, except we didn't have a Madera County operation this year, and instead went more extensively into Tulare County where we operated two packing plants there.

Q. Was your salary for services in the nature of participation?

A. For '48?

(Testimony of Floyd James Harkness, Jr.)

Q. Yes. A. It——

Q. It hasn't been decided yet?

A. Yes, it has. The books are being closed.

Q. You are getting participation in the profits?

A. Yes, sir.

Q. And your participation in the profits, I am talking about salary, I am not talking about your partnership interest, I am talking about payment to you for services rendered——

A. Yes, sir, of the net profit, yes, sir.

Q. And your father, likewise? A. Yes, sir.

Q. I direct your attention to the agreement of January 4, 1943, which is the document signed by the four members of your family, and fixing the compensation, among other things, of your father, at 75 per cent of the net income of the said [149] United Packing up to \$100,000, and then making distribution of the balance. A. Yes.

Q. Do you recall where you were when you signed this? A. That was when, sir?

Q. In January, 1943.

A. I was at Hamilton Field.

Q. Do you recall signing this document?

A. Yes, sir. I believe it was mailed to me and I returned it, although we had talked of it previously. That was just a formality of signing it at that time.

Q. You had talked it over previously with your father? A. Certainly.

Q. And your mother? A. Yes.

(Testimony of Floyd James Harkness, Jr.)

Q. And you agreed upon that as the compensation which your father should receive as provided in the agreement? A. Yes, sir.

Q. I direct your attention to your capital account, Mr. Harkness, and it appears in Exhibit 6-F, Page 4, that on your capital account there was in the year '44, December 31, the following item of credits to increase capital to \$65,000: \$30,439.60. You are familiar with the fact that you were increasing the capital of the partnership in order to aid——

A. That was our understanding all along, sir, that [150] when we had accumulated sufficient profits to increase the capital that we would.

Q. And the capital account indicates that during the years '43, '44, and '45 you withdrew very little if any funds whatsoever, and allowed those funds to accumulate with United Packing Company. Is that correct? A. Yes, sir.

Q. In the year 1946, upon your return, you made substantial withdrawals: May 28, Collector of Internal Revenue, \$41,423.52; May 28, for '44 tax, Collector of Internal Revenue, \$35,645.15; June 14, Collector of Internal Revenue, 1945 tax, \$28,654.87.

Then, other than those withdrawals, the capital account on the books of the partnership show that you have withdrawn very little funds.

A. That's right, except for the payment of income tax during '46. I had received a salary though, and used that.

Q. You mean salary from the government?

(Testimony of Floyd James Harkness, Jr.)

A. Oh, no, sir, '46. No, sir. You are speaking of '46, I believe.

Q. That's right, I am talking of the year '46. Up to that time you had withdrawn very little if any funds. In the year '46 you made these large withdrawals for income tax purposes on your return.

A. Yes, sir. [151]

Q. By the way, you made the statement, you say you received a salary in '46 of \$57,984.75.

A. That was the same salary that previous employees had received.

Q. I am asking that, and that was withdrawn by you?

A. Yes, sir.

Mr. Ehrlich: That is all.

Cross-Examination

By Mr. Mather:

Q. Mr. Harkness, I am a little confused. I think you testified, as did some of the other witnesses, that you executed that agreement which is Exhibit 11-K on or about the date it bears, December 31, 1942.

Mr. Ehrlich: That is not his testimony.

The Witness: I was just going to say that, Mr. Ehrlich.

That is not what I testified, sir.

Q. (By Mr. Mather): When did you execute it?

A. Oh, as I said, probably in February of '43.

Q. February of '43?

A. I believe that was approximately the date. I don't recall the exact date of the instrument, sir.

(Testimony of Floyd James Harkness, Jr.)

Mr. Ehrlich: The notary's certificate attached says the 27th day of February. That is, the notary's certificate [152] as to the signatures of the Harknesses. And the Colgates' notary's certificate in Franklin County, State of Ohio, is the 10th of March, '43.

Mr. Mather: Well, now, does the exhibit before the Tax Court show these dates of acknowledgment?

Mr. Ehrlich: I don't think they do.

Mr. Mather: The reason I want to clear this up is because I was under the impression that they were executed on or about the dates they bear, and I want to find out how the daughter didn't agree to them and signed them at a later date, and what the changes are.

Mr. Ehrlich: If not, may we correct the record to substitute it?

The Court: Yes. The complete copy should include the notarial certificates.

Mr. Ehrlich: I am pretty sure they don't, your Honor.

Mr. Mather: Let it be stipulated then that the notarial seal on Exhibit 11-K shows the signature by Floyd J. Harkness, Molly A. Harkness, and Floyd James Harkness, Jr., to be on the 27th day of February, 1943, and that the signature of Harriet Harkness Colgate is on the 10th day of March, 1943.

Mr. Ehrlich: All right.

The Court: The record may show that as a stipulation [153] of the parties.

(Testimony of Floyd James Harkness, Jr.)

Q. (By Mr. Mather): Was this correspondence about the partnership agreement that you had with your father or mother, was that longhand correspondence or correspondence from United Packing Company, typewritten correspondence?

A. I don't believe it was officially United Packing Company correspondence. I was home at Christmas time in '42, spent Christmas with my parents, and we talked of it at length then.

Q. I am talking about correspondence.

A. I think most of it was in person, sir.

Q. Longhand rather than typed?

A. No, sir, in person, talking to my parents while I was in Fresno.

Q. You testified that you had considerable correspondence.

A. I did, sir, but during the fall of '42.

Q. I am asking, was that typewritten or longhand correspondence?

A. Well——

Q. Do you recall?

A. In the case of my father it would be typewritten, and my mother, it would be longhand, sir.

Q. Have you searched United Packing Company for any [154] of that correspondence?

A. Well, he wrote that at home in the evenings, I know, and he used my own typewriter to correspond with me from home. It was informal in nature, most of it, but it concerned our business association to a great extent.

Q. Most of the key employees that were em-

(Testimony of Floyd James Harkness, Jr.)

ployed by United Packing Company other than Sorensen were with them in 1946, weren't they?

A. Some of them were and some of them were not.

Q. Well, I am saying most of them.

A. No, I don't think the majority of them were.

Q. Well, have you looked at Exhibit——

A. During the war we had gone in with Mr. Mazzie down in Bakersfield and grown vegetables, potatoes and rutabagas and other things, and that deal, of course, had been terminated.

Q. Have you looked at Exhibit 5-A attached to the stipulation of facts showing the bonus paid in addition to regular monthly salaries to the employees?

A. By that identification I don't know what you are talking about, sir. I am fairly familiar with most all the percentage deals we have had with various employees, sir.

Mr. Mather: That is all.

The Court: That is all, Mr. Harkness.

(Witness excused.) [155]

The Court: Any other witnesses?

Mr. Ehrlich: None, your Honor.

The Court: Petitioners rest?

Mr. Ehrlich: Yes, your Honor.

The Court: Have you any evidence to offer?

Mr. Mather: No, your Honor.

The Court: Both parties rest.

You may have 45 days for simultaneous briefs, 20 days for answering briefs.

That concludes the hearing at this time.

(Whereupon, at 4:25 o'clock p.m., the hearing in the above-entitled matter was concluded.)

13 T. C. No. 129

The Tax Court of the United States

Docket Nos. 16407, 16408

MOLLY A. HARKNESS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

FLOYD J. HARKNESS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Promulgated December 22, 1949.

On the facts, held, that when sole proprietorship was converted into a family partnership in 1943, neither petitioners nor their son and daughter intended to join together in the present conduct of the business, and, therefore, the partnership was invalid for tax purposes in that year. *Commissioner v. Culbertson*, 337 U. S. 733.

PHILIP H. EHRLICH, ESQ.,

R. J. HECHT, ESQ.,

LE ROY H. GUNTHER, ESQ.,

For the petitioners.

T. M. MATHER, ESQ.,

For the respondent.

FINDINGS OF FACT AND OPINION OF THE TAX COURT

The above-entitled cases were consolidated for hearing. Respondent determined a deficiency in the income tax liability of petitioner Floyd J. Harkness in the amount of \$65,367.27 for the calendar year 1943 and a deficiency in the income tax liability of petitioner Molly A. Harkness in the amount of \$64,781.64 for the same year. The only issue raised in this proceeding is whether a valid family partnership existed between petitioners and their children, Floyd J. Harkness, Jr., and Harriet H. Colgate in the operation of United Packing Co. in 1943.

Findings of Fact.

Part of the facts were stipulated and are so found.

Petitioners, Floyd J. Harkness and Molly A. Harkness, are individuals residing in Fresno, California. They filed their separate income tax returns for 1943 with the collector of internal revenue for the first district of California. Peti-

tioners were married July 14, 1915, and have made their home in California ever since. They have two children, Floyd J. Harkness, Jr., and Harriet Harkness Colgate, born in 1918 and 1920, respectively.

Harkness, Sr., has been a grower and shipper of fruits and vegetables since 1918. Prior to 1937 he engaged in this occupation first as an employee of various concerns and then as a member of two successive partnerships operating under the name of United Packing Co. In January, 1937, Petitioner bought out his partner and commenced operating the business as a sole proprietorship under the same name. Molly Harkness, as his wife, owned the assets of the business in community with him. The company specialized in packing and shipping cantaloupes, carrots, peaches, plums, nectarines and grapes. Some commodities were raised by the company itself while others were bought from farmers on a cash basis. Still other produce was packed and shipped by the company on a commission basis. For the purposes of its business United Packing Co. operated ranches and packing houses, and manufactured and stocked packing materials. Its main office was located in Fresno, but its operations covered a large area in the San Joaquin Valley extending northward 138 miles to Lodi and southward 127 miles to Arvin. At the close of 1942 the gross proceeds and net income earned by United Packing Co. amounted to \$1,-468,119.64 and \$141,790.95, respectively.

During the years up to 1942 petitioners' two

children were occupied primarily in obtaining an education, though each performed some services in their father's business. Harkness, Jr., attended schools until June, 1941, when he graduated from college with a major in commerce. From 1934 until 1941 he worked in his father's business during summer vacations and in 1937 he quit school for six months to help his father launch the sole proprietorship. From June, 1941, until January, 1942, he devoted his full time as an employee of United Packing Co. working as a "regular field man" at a salary of \$150 per month plus a five per cent bonus of approximately \$910. During this six-months' period he also earned four to five thousand dollars in independent deals in the fruit and vegetable business. On January 12, 1942, he entered the United States Air Corps as a private. At the close of 1942 petitioners' son still had a credit on the books of the sole proprietorship of \$1,412.05 for prior services performed. He owned no substantial property outside of these earnings at that time.

Harriet Harkness finished her schooling in June, 1942, when she graduated from college. During summer vacations she had occasionally performed secretarial services in her father's business. Harriet worked full time as a secretary at United Packing Co. from June until August, 1942, at which time she married William H. Colgate, Jr., who was then serving in the United States Army. Following her marriage she spent her time housekeeping for her husband at various military posts in

the United States until October, 1944. She owned no significant amount of property at the time of her marriage.

Harriet's husband, William Colgate, had resided in Fresno County, California, all his youth and had been an acquaintance of the Harkness family for a number of years prior to his marriage in 1942. He attended college, majoring in commerce, and during summer vacations was employed by Peerless Pump Company, the largest supplier of irrigation pumps in the San Joaquin Valley. Colgate later quit school and worked full time for this company for nine months before enlisting in the United States Army in March, 1941. This was in keeping with his desire to devote his career to agricultural pursuits in the Valley. As an assistant foreman aiding in the installation of extensive irrigation systems, Colgate acquired considerable knowledge of the mechanics of irrigation. After his marriage to Harriet, they were stationed at Columbus, Ohio, during the latter part of 1942 and throughout 1943.

In the fall of 1942 Harkness, Sr., became convinced that it would be advantageous to convert the operation of his fruit packing and shipping business from a sole proprietorship to a partnership composed of his wife, himself and his two children in the coming year. Many reasons dictated that decision. Primarily he desired to obtain the services of his son and son-in-law in the business. He felt that as a result of their college education and the practical experience they had gained pur-

suings agricultural employment in the Valley that they would make skilled, competent supervisors capable of overseeing the widespread operations of the company. Secondly, from his experience in the fruit and vegetable packing industry, Harkness believed that it was essential to increase the capital investment in the company by allowing annual profits to remain in the business. This was necessary not only to permit payment of extensive operating expenses, to allow for expansion of company facilities and equipment and to develop new business, but also to meet the exigencies of bad crop years when the company's income declined drastically. Furthermore, in 1942 fruit packers were anticipating a decline in profits due to labor shortages, low transportation priorities for their produce, and the probability that prices would tumble as in World War I. These circumstances only increased the need for increasing the capital reserve of United Packing Co. Yet it had been Harkness' experience in past years that to hold qualified supervisory personnel it was necessary to pay them large bonuses or percentages of profits which they invariably withdrew from the business and often used to set themselves up in competition with him, thus draining the company's capital. He felt the only way to retain profits in the company was to bring into the business persons who felt as he did. Through long discussions with Harkness, Jr., and William Colgate petitioner knew that they agreed with him that only a reasonable amount of the profits should be withdrawn from United Packing

Co. and the rest of the net income should be allowed to accumulate in the business.

While Harkness, Sr. was well aware that neither Floyd, Jr., nor William Colgate would be available to serve United Packing Co. for the duration of the war and he would be the only active partner in the meantime, yet he desired them to acquire an interest in the company at this time to guarantee their future help in running the business after their release from the Army.

Furthermore, formation of the partnership accorded with the wish of Harkness, Sr., to give his children an opportunity to make good. Even when Floyd, Jr., was a boy he and his father planned for the day when the former would be a full-fledged partner. After graduation from college in 1941 Harkness, Jr., had pressed his father to give him the status of a partner in the business, and while Harkness, Sr., had too many financial commitments to do so in that year, yet he promised his son he would make provision for him to purchase an interest in the business. Now petitioner desired to fulfill that promise. It was long understood that if one child was given an opportunity to participate in the business, the other would be given an equal opportunity. Offering Harriet an opportunity to become a partner in his business not only fulfilled this pledge, but was a long step toward securing the eventual services of her husband which petitioner so greatly desired.

While Harkness, Sr., consulted a lawyer concerning the feasibility of converting his business into

a partnership and was thus aware of the tax saving possibilities inherent therein, yet this fact was only a secondary consideration with him, and he would have entered into this arrangement regardless thereof.

During the fall of 1942 Harkness, Sr., held lengthy conversations with his son, who was stationed at a nearby airfield, regarding the proposed partnership. Harkness, Jr. eagerly accepted the chance to buy an interest in United Packing Co. for this had been his great desire for many years and assured him of full participation in the business on his return from the service. Petitioners and young Harkness then definitely planned to convert the business into a partnership starting in 1943.

Over the same period of time Harkness, Sr. also corresponded with his daughter and offered her either the opportunity to invest in United Packing Co. or some other enterprise. Furthermore, it was understood that if she decided to come into her father's business, her husband, William Colgate, would be allowed to participate in the partnership following his release from the Army. Harriet and William Colgate debated at length whether it was advisable for her to buy an interest in her father's business or invest elsewhere. Finally Harriet exercised her option to procure an interest in United Packing Co. after her husband determined he wanted to be associated with United Packing Co. upon his return from the service.

Thus by November, 1942, petitioners and both their children generally agreed to the formation

of a partnership for the operation of United Packing Co. in the coming year, though the details of the partnership relationship had not been worked out. A "Certificate of Co-Partnership Transacting Business under Fictitious Name" was executed on November 12, 1942, which petitioners and young Harkness signed on that date and Harriet signed on November 28. It stated that the four were co-partners carrying on business under the name of United Packing Co. and that Harkness, Sr. was the general manager in full charge of all business operations. This certificate was published in a local paper and later filed with the county recorder of Fresno County.

On December 31, 1942, "Articles of Partnership," providing the detailed terms of the proposed partnership, were drafted and met the approval of all but Harriet Colgate, who refused to sign until provisions as to control of the business and as to purchase of a deceased partner's share were modified.

On January 1, 1943, petitioners transferred to United Packing Co., a partnership, most of the assets and some of the liabilities of United Packing Co., sole proprietorship, existing on December 31, 1942, resulting in a net worth of \$138,241.61 for the partnership on that date. Harkness, Jr. and Harriet Colgate each bought a one-fourth interest in the partnership for \$34,560.41, equivalent to one-fourth of its net worth. To pay Harkness, Sr. for his share in the partnership the son used \$1,392.05 of the credit he had earned as compensation for

prior services rendered the sole proprietorship and on January 2, 1943, signed a promissory note for the remaining \$33,168.35 with interest at four per cent per annum. Harriet Colgate purchased her partnership interest from her father with a promissory note dated January 2, 1943, for \$34,560.40 plus four per cent interest per annum. William Colgate joined her on the note as co-maker. No collateral was required on either note.

These transactions were reflected on the books of United Packing Co., co-partnership, as of January 1, 1943. It showed assets of \$142,861.03 and liabilities of \$4,619.92 and a net worth of \$138,241.61. Capital of the partnership was stated to be \$138,241.61 resulting from contributions of \$34,560.41 each from the three Harknesses and Harriet Colgate.

On January 4, 1943, pending acceptance by Harriet Colgate of the articles of partnership drafted on December 31, 1942, Harkness, Sr., Molly Harkness, Harkness, Jr., and Harriet Colgate signed a supplemental agreement fixing compensation and distribution of partnership profits among the partners. The salary of Harkness, Sr., as general manager of the partnership, was fixed at 75 per cent of the first \$100,000 of the partnership net income. There was no provision for salaries for the other partners. The remainder of the first \$100,000 of partnership net income was to be divided equally among the partners, as were any profits over that amount. Paragraph three of this supplemental agreement stated:

It is understood and agreed that the payment of the 75% of the net income as provided for, is being made to first party on account of the fact that he is the only active co-partner in said business at this particular time and will continue as such during the duration of the present war.

During January, 1943, Harkness, Sr. discussed with the Colgates the modifications sought by Harriet Colgate in the partnership agreement drafted on December 31, 1942. Harriet withdrew her objections when the original draft was altered to meet her demands. The reformed partnership agreement was signed by the three Harknesses on February 27, 1943, and by Harriet Colgate on March 10, 1943. The terms of this agreement were as follows:

These Articles of Co-Partnership, made and entered into this 31st day of December, 1942, by and between Floyd J. Harkness, first party, Molly A. Harkness, second party, Floyd James Harkness, Jr., third party, and Harriet Harkness Colgate, fourth party, the first, second and third parties being residents of the County of Fresno, State of California, and fourth party being a resident of Columbus, Franklin County, Ohio:

Witnesseth:

That the said parties hereto for themselves, their heirs, executors, administrators and assigns agree to become co-partners in the business of carrying on a general business of growing, packing, shipping

and distributing of fresh fruit and vegetables in the State of California, including the purchasing and selling of any and all kinds of real and personal property necessary in carrying on and conducting said business, and said business shall be conducted under the firm name and style of "United Packing Co." from January 1st, 1943 until such time as the said co-partners shall mutually agree to dissolve said co-partnership, or the said co-partnership shall be otherwise as hereinafter provided dissolved, and that the terms upon which the said parties have entered into said co-partnership are hereinafter stated as follows, to-wit:

That the said business of growing, packing, shipping and distributing of fresh fruit and vegetables and any other business which shall be incidental and necessary thereto, shall be carried on in the State of California and that the principal place of business of said co-partnership shall be in the Rowell Building in the City of Fresno, County of Fresno, State of California or at any other place or places as the partners shall hereafter determine and that the firm name and style of said co-partnership business shall be United Packing Co., with real and personal property belonging thereto located in the Counties of Kern, Tulare, San Joaquin and Fresno, State of California.

It is understood and agreed by and between the parties hereto that said first party has been conducting the above mentioned business individually under the firm name and style of United Packing Co., and that he and Molly A. Harkness, his wife,

second party herein, have been the owners of all the real and personal property, equipment and materials that are now used in carrying on said business, together with such moneys as may now be on deposit in the name of the said United Packing Co. and together with any and all outstanding accounts owing as of this date, the said Floyd J. Harkness and Molly A. Harkness, first and second parties herein, do by these presents, sell, convey and set over, an undivided one-fourth partnership interest in and to all of the partnership property of the United Packing Co. to each of the third and fourth parties, namely, Floyd James Harkness, Jr., and Harriet Harkness Colgate, and from this date on each of the said co-partners above named, shall be and become the owners of an undivided one-fourth interest of all of the property of the said co-partnership doing business under the firm name and style of United Packing Co. and that the real and personal property which shall compose the capital of the said co-partnership and belong to the newly organized co-partnership is described in a Schedule marked Exhibit "A" and attached hereto and made a part of this agreement as if herein fully set out, and that there shall also belong to said co-partnership any and all other assets which now belong to said co-partnership and are not herein described as well as any and all other assets which may hereafter belong to said co-partnership; that all thereof shall belong equally to all of the partners herein named and in consideration of said first party conveying all of said real and personal prop-

erty to said co-partners being conducted under the firm name and style of the United Packing Co., and which is agreed to be of the net value of \$138,-241.61, that the said third and fourth party shall each execute in favor of first party a promissory note in the sum of \$34,560.40, payable in the manner as therein set forth to first party, and which sum shall be the purchase price for their undivided one-fourth interest in and to all of the assets of said co-partnership.

It is understood and agreed by and between the parties hereto that the said first and second parties are husband and wife and that all of the property which said first party is on this date conveying to the newly formed co-partnership, in which all of the above named parties are equal partners, has been accumulated by first and second parties during their married life and is the community property of first and second parties and that one-half thereof, by reason thereof, is the property of said second party and that the said second party does herewith join first party in the conveying of all of the said assets herein described to the said co-partnership so that from this date on, all of the said property now belonging to the said United Packing Co. and any and all other property which may hereafter belong to said co-partnership shall be owned equally by all the said co-partners.

It is understood and agreed by and between the said co-partners that said first party shall be, and is from this date on made the general manager of said co-partnership, and that he shall be in full

charge of all business operations of said co-partnership and that he shall have the full right to conduct the business of said co-partnership in such manner as he may desire, including the selling of any and all of the partnership assets and the purchasing of such other property as he may desire in the name of said co-partnership together with the right to borrow such money as he may deem necessary to carry on said business and in consideration thereof it is understood and agreed that first party is to receive for his said services a certain percentage of the net profits of said business to be agreed upon between all of the partners herein from time to time as they may agree upon between themselves, and that the balance of the net income of said co-partnership shall be equally divided between all of the co-partners herein at such time or times as they may agree upon, provided however that any profits which third and fourth parties are entitled to receive shall be paid to first party and applied by him first, to any payment which first party may have advanced to third and fourth parties, together with interest thereon and the balance thereof, if any, shall be applied by first party in the payment of the promissory notes which the said third and fourth parties have executed in favor of first party for the purchase price of their share in said co-partnership business.

It is understood and agreed that the said first party as general manager, and anyone of the other co-partners acting together shall have the right to bind the said co-partnership in such manner or

form as they may deem necessary, in order to carry on the business of the said co-partnership, and that no other co-partner shall have the right to in any manner bind the said co-partnership, and that no co-partner shall have the right to in any way sell, assign, set over, transfer or hypothecate his undivided one-fourth interest in said co-partnership without first obtaining the written consent of two other co-partners.

It is understood and agreed that said first party as general manager of said co-partnership shall devote such portion of his time and attention to the conducting and carrying on of said business, as he shall deem necessary and proper but that he will at all times use his own good judgment and best efforts and experience in carrying on said business for the best interests of all parties concerned and that second, third and fourth parties shall not devote any time or attention in carrying on said business unless hereafter agreed upon by and between any three of said co-partners and at that time it shall be agreed upon by and between any three of said partners as to what the compensation shall be for the services which third or fourth partner may contribute towards the carrying on of said co-partnership business.

It is understood and agreed that there shall be kept at all times a complete set of books of account wherein there shall be entered any and all records and transactions of said business and that the said first party shall have complete charge thereof and that said books shall be under his immediate super-

vision and that the said first party shall have the full charge of the collections and expenditures of all of the moneys received and taken in, in the carrying on of said business, and that all of the business transactions of said first party in carrying on said business shall be binding on all of the said co-partners.

It is understood and agreed in this connection that first party will render on the 1st of each year a true and full statement and account of the profits or losses of said business and all other matters and transactions done and performed in connection with said business.

It is understood and agreed by and between the parties hereto that upon the consent of the managing partner and two of the remaining partners that the capital of the partnership may be increased to such sum as may be determined by them, and that thereafter each of the partners shall contribute their respective share of the capital increase. In the event the managing partner and two of the other partners desire to reduce the capital of the partnership or withdraw profits, then such determination shall become binding upon all the partners hereto.

It is further understood and agreed by and between the parties hereto that each one of the partners will not, without the previous consent in writing of the other partners, enter into any bond or become bail or security for any person or persons or do or suffer to be done anything whereby the capital or property of the co-partnership may be taken by execution and that each partner shall

punctually pay his own separate debts and should anyone of the said co-partners become financially involved in outside interests so that his share in the said co-partnership business shall become involved, and should anyone of said co-partners in any manner so become involved then the other co-partners shall have the right to acquire such insolvent partner's right, title and interest in said co-partnership at the book value thereof without any consideration of the good will of the said co-partnership and upon such transfer, such insolvent partner shall have no further right, title and interest in and to the capital assets of the said co-partnership.

It is understood and agreed that in the event that anyone of the said co-partners decide to sell or in any way dispose of their interest in the said co-partnership business, that then the remaining co-partners shall have the right to purchase such partner's interest in said co-partnership and then the selling co-partner shall convey all of his right, title and interest in and to the said co-partnership property to the remaining co-partners, and shall receive for such conveyed interest the book value of such interest at said time without any consideration of the goodwill of the co-partnership and that the amount which the selling co-partner shall receive may be paid in cash by the remaining co-partners, but if the remaining co-partners do not desire to pay cash for the selling partner's interest, then they shall have the right to pay such amount by the application of the profits from the business

of such selling partner's share and that the same shall continue to be paid in this manner until the said purchase price of such selling partner's interest in said co-partnership shall have been paid in full, and then such selling partner shall execute in favor of the remaining co-partners a Bill of Sale conveying all of his right, title and interest in and to the said co-partnership and assets to the remaining co-partners.

It is understood and agreed by and between the parties hereto that should anyone of the partners become deceased, that then the remaining co-partners shall have the right to purchase such deceased partner's share in said business at the book value at the time of the death of such co-partner without any consideration of the goodwill of the partnership and such deceased partner's interest in said business shall be paid to the legal representative of such deceased partner and then the legal representative of such deceased partner's estate shall convey all of the deceased partner's right, title and interest in and to the said co-partnership property to the remaining co-partners and the legal representative of such deceased partner shall receive for such conveyed interest the purchase price for such deceased partner's interest which may be paid in cash by the remaining co-partners or if the remaining partners do not desire to pay cash for such deceased partner's interest, then they shall have the right to pay such amount by the application of the profits from the business of such deceased partner's interest and that this method of payment shall

continue until the said purchase price of said deceased partner's interest shall have been paid in full and that upon such payment in full of the purchase price of said deceased partner's interest in said co-partnership the legal representative of such deceased partner shall execute and deliver to the remaining co-partners a Bill of Sale conveying all of the said deceased partner's interest in the said co-partnership business and assets.

It is also agreed by the co-partners that in the event of any misunderstanding between the co-partners concerning the matter of conducting and carrying on of said business that then the partners shall, between themselves adjust the same; it is however understood in this connection that the decision of the general manager and one other partner hereto shall determine any question which may arise between them and in the event that anyone or more of said co-partners should be dissatisfied with such decision then they shall have the right as given them by the laws of the State of California to bring proceedings in court for the purpose of either dissolving the said co-partnership or obtaining such relief as they are entitled under the terms of this co-partnership.

It is further understood and agreed that this co-partnership business is entered into on the proposition that each partner has an equal interest therein and is entitled to an equal share in all gains, profits and increases which shall come, grow or arise from, or by means of said business so long as such partner or partners shall not be in default

in any of the terms of this agreement and that each partner shall be entitled to his one-fourth share of the said profits and that each partner shall likewise share equally in any losses which the said partnership may sustain and that each partner shall in the event it becomes necessary to furnish additional funds by reason of any losses which the said partnership may sustain, then each partner shall furnish and pay into the said business his equal share which may be necessary in order to continue on with the said co-partnership business. It being agreed that the decision of the managing partner and any two of the remaining partners shall be final as to the matter of the division of the profits and the amount which may be paid in by each partner in the event it becomes necessary to do so on account of losses sustained by the said co-partnership. ,

That at the end or sooner determination of their co-partnership, the said co-partners, each to the other, shall and will make a true, just and final accounting of all things relating to their said business, and in all things truly adjust the same; and that all and every stock and stocks, as well as the gains and increase thereof, which shall appear to be remaining, either in money, goods, wares, fixtures, debts or otherwise, shall be divided between them, share and share alike.

In Witnesseth Whereof, the above-named partners have hereunto set their hands and signatures the day and year first above written.

In February, 1943, an undivided one-half interest in a 300-acre vineyard and orchard was acquired

by Harkness, Sr., Molly Harkness, Harkness, Jr. and Harriet Colgate as tenants in common. The other half interest in the ranch was acquired by Chris Sorenson and his wife. Sorenson was a supervisory employee of United Packing Co. All funds for purchase of the vineyard were supplied by United Packing Co. and the amount loaned to Sorenson was repaid to the company by him. The 50 per cent interest acquired by the Harknesses and Harriet Colgate was included as an asset of United Packing Co. and subsequent income therefrom was included in its net income. Previously on January 16, 1943, by a bill of sale the personal property on the River Ranch had been conveyed to Chris A. Sorenson and Katharine Sorenson, his wife, and "Floyd J. Hartness, Molly A. Harkness, Harriet Harkness Colgate and Floyd J. Harness, Jr., co-partners, doing business under the firm name and style of United Packing Co., a co-partnership." Prior to these purchases, all the partners were consulted with respect to them, and Harkness, Jr., who was familiar with the land, approved the transactions.

During the year 1943 there was no change in the operation of United Packing Co. over prior years. The business was still completely under the control of Harkness, Sr. Harriet and William Colgate were absent from Fresno until his discharge from the armed services in October, 1944, so consequently she performed no services for United Packing Co. during the year 1943 nor did she participate in the management of its affairs. Throughout the year 1943 until December, Harkness, Jr. was stationed at

Hamilton Field, California, approximately six hours traveling time from Fresno, and frequently visited the company's office and packing plants on weekends. While he was unable to participate in the business activities, yet he discussed its problems with his father on these occasions. In December, 1943, Harkness, Jr. went overseas with the Air Corps and did not return to Fresno until January, 1946.

In 1943 United Packing Co. earned gross proceeds of \$2,572,905.53 and a net income of \$361,582. In accordance with the terms of the supplemental agreement Harkness, Sr., was paid a salary of \$75,000 and Harkness, Sr., Molly Harkness, Harkness, Jr., and Harriet Colgate each were credited with \$71,645.50 as their respective shares of the profits.

Harriet's credit on the partnership books was first applied to pay off the principal and interest on her promissory note to Harkness, Sr., in the amount of \$35,942.82, and to offset prior withdrawals from her capital account consisting of cash in the amount of \$112.97 and sums of \$1,070.89 and \$31,423.67 paid to the collector of internal revenue. The balance of \$3,095.15 which she left in the business at the close of 1943 was withdrawn in 1944 to pay for taxes and personal expenditures. Of the \$71,645.50 credited to Harkness, Jr., \$34,495.08 was turned over to his father to pay the principal and interest on his promissory note. Of the remaining \$37,150.42 which he left in the business in 1943, young Harkness expended \$331.58 for his own use in 1944.

United Packing Co. filed a partnership return

for the year 1943, reporting a net income of \$361,582, compensation of \$75,000 paid to Harkness, Sr., and the distribution of \$71,645.59 from profits to each of the three Harknesses and to Harriet Colgate.

Harkness, Sr., and Molly Harkness filed separate income tax returns in 1943. As residents of a community property state each reported one-half of the total income of \$218,291 they together received from United Packing Co. in 1943, or \$109,145.50.

In his notices of deficiency sent to petitioners respondent determined that the net income of United Packing Co. for 1943 was \$361,823 and that each petitioner realized one-half of this amount, or \$180,916, as community property income. The notice of deficiency sent to Harkness, Sr. Stated in part:

(a) On December 31, 1942, you and your wife Molly A. Harkness, together with your two children, Floyd James Harkness, Jr., and Harriet Harkness Colgate, executed an instrument purporting to create a family partnership. Since Floyd James Harkness, Jr., and Harriet Harkness Colgate contributed no capital originating with themselves, rendered no services to the business, and were not required to participate in the control and management of the business under the terms of the alleged partnership agreement, it is held that they did not acquire valid partnership interests in the United Packing Company. Accordingly, profits from the above-named organization are reallocated to you and your wife on a community property basis, thus increasing your taxable income by \$71,770.50 as shown below.

Total net profit of United Packing

Company	\$361,832.00
Your community one-half share	180,916.00
Amount reported on return	109,145.50

Adjustment—Increase\$ 71,770.50

Similar language was contained in the notice of deficiency received by Molly Harkness.

The three Harknesses and Harriet Colgate had no intent to join together in conducting the business of United Packing Co. as bona fide partners in 1943 and thus their partnership was not valid for tax purposes in that year.

Opinion.

Hill, Judge:

The only question for our determination in this case is whether a partnership, valid for tax purposes, existed between petitioners and their children, Harkness, Jr., and Harriet Colgate, in 1943. Petitioners contend that a valid partnership was formed between petitioners and their children on January 1, 1943, for the conduct of business under the name of United Packing Co. which continued in existence throughout the year. There is no contention on their part that William Colgate was a partner during this period. Respondent argues that all the net income of United Packing Co. in 1943 was community income of petitioners because no bona fide partnership existed in that year. Since this case arises in a community property state, California, and there is no serious contention denying the wife's

interest in United Packing Co., our consideration is directed to the alleged participation of the children in the business as partners.

In determining whether a bona fide partnership existed between the three Harknesses and Harriet Colgate in 1943 the basic question is, as the Supreme Court stated in *Commissioner v. Culbertson*, 337 U. S. 733,

* * * whether, considering all the facts—the agreement, the conduct of the parties in execution of its provisions, their statements, the testimony of disinterested persons, the relationship of the parties, their respective abilities and capital contributions, the actual control of income and the purposes for which it is used, and any other facts throwing light on their true intent—the parties in good faith and acting with a business purpose intended to join together in the *present conduct* of the enterprise. (Italics supplied)

While some of the evidence in this proceeding is indicative of a valid family partnership yet, after careful study of the purposes which motivated the formation of a partnership for the conduct of United Packing Co., the circumstances existing at the time of this decision, the partnership agreement and the supplementary agreement thereto, and the actual conduct of the business throughout the year 1943, we are convinced that there was no intent on the part of the four alleged partners to join together

in the present conduct of United Packing Co. in 1943.

Both the purposes stated by Harkness, Sr., for converting the sole proprietorship into a partnership and the circumstances existing at the time of this decision in the fall of 1942 plainly show it was not contemplated by any of the parties that the Harkness children would contribute substantial capital or vital services to conduct of the business in 1943 or play any active part in its management. The evidence is clear that Harkness, Sr., offered his son and daughter an opportunity to acquire an interest in United Packing Co. in 1943 primarily to obtain the future services of his son and his son-in-law, William Colgate. He did not thereby expect to acquire either capital or services from Harriet at any time but wished to provide her with an opportunity for investment and lay the foundation for future participation in the company's affairs by her husband. His testimony shows that the year 1943 was chosen for conversion of the sole proprietorship into a partnership in order to guarantee the services of young Harkness and William Colgate after their return from the war rather than to secure their present services.

Q. You knew at the time you organized the company both your son and son-in-law were in the service, and you knew, naturally, that they couldn't render any service at the time. Why did you create the partnership knowing

that they could not render any service until they were released from the Army?

A. I wanted to be sure of their services * * *

The circumstances existing in the fall of 1942 also makes it obvious that no vital services or contributions of original capital could have been expected from the Harkness children in 1943. Harkness, Jr., had been in the Army since January 1942, and there was little likelihood of his return to Fresno for the duration of the war. He owned no substantial property at this time and his prospective earnings were low while in the Army. Harriet had left California to accompany her husband across the country in his various stateside Army assignments in August 1942, and there was no certainty when he would be released. At the time of her marriage she had no independent means of her own and the evidence does not reveal the capital resources of her husband.

In keeping with economic status, neither Harkness child made any substantial contribution of new capital to United Packing Co. when the partnership was formed in 1943. Harriet acquired her one-fourth interest in the partnership solely by means of a promissory note which was paid entirely out of the company's profits accruing from the business at the close of the year. Young Harkness gained his interest in United Packing Co. by using a credit of \$1,392.05 owed him by his father for prior services and by signing a promissory note for \$33,168.35 which was also paid out of company earnings

for 1943. Since this credit was but a tiny fraction of the company's total capital of \$138,241.61 on January 1943, we must conclude that neither Harkness, Jr., nor Harriet Colgate contributed any substantial capital not already available to the company within the meaning of *Lusthaus v. Commissioner*, 327 U. S. 293. While such lack of a capital contribution originating with themselves is not in itself determinative of the partnership status of the Harkness children, yet the presence or absence of such a capital contribution is a significant test of whether the parties intended to form a bona fide partnership. *Lusthaus v. Commissioner*, *supra*, *Commissioner v. Tower*, 327 U. S. 280.

Turning to the partnership agreement, it also refutes an intent by the signatories to join together in the present conduct of the affairs of United Packing Co. but rather shows an intent that Harkness, Sr. continue to control the conduct of the business as in prior years when he was sole proprietor. The parties therein agreed that neither Harriet, young Harkness nor Molly Harkness would devote any time to carrying on the business unless hereafter agreed upon, but that Harkness, Sr. would be general manager thereof in full charge of all business operations which he might conduct as he chose. Harkness was given full charge of the books of account of the partnership and of the collection and expenditures of money taken in. His consent was necessary to bind the partnership in any business transaction and to lower or raise partnership

capital. His participation was necessary in the adjustment of any misunderstanding between the partners as to the conduct of the business and in the determination of the proper allocation of profits and losses among the partners. Furthermore, the Harkness children had no unhampered enjoyment of their share of the profits, for net income accruing to them was first to be turned over to Harkness, Sr. and applied to any payments he may have advanced to them and the balance was then to be applied on the promissory notes executed in his favor. Thus by the terms of the partnership agreement Harkness, Sr. retained a controlling position over the company's activities and the income therefrom.

The supplementary agreement of January 4, 1943, also contradicts any intent on the part of the alleged partners to join together their services in the conduct of United Packing Co. in 1943. By its provisions Harkness, Sr. alone was to receive compensation for services because he was to be the only active partner in the business for the duration of the war.

Finally, the actual conduct of the business of United Packing Co. in 1943 makes it clear that the parties intended for Harkness, Sr. to operate it as a sole proprietor for the duration of the war. Young Harkness and Harriet Colgate rendered no vital services nor did they participate in the management of the business during that year. Harriet was absent from Fresno the entire time. While by chance young Floyd was stationed in California during almost all of 1943 and frequently visited the

company's plant on weekends to talk over business conditions with his father, yet such visits hardly bespeak an active role in the conduct of the company, but rather a continuing interest therein by a prospective participant. The evidence reveals only one transaction, the purchase of River Ranch, where the approval of his children was sought by Harkness, Sr. Nor was Floyd, Jr.'s intent to perform future services for United Packing Co. on his return from the war sufficient to give him a partnership status in 1943. As the Supreme Court said in *Comimssioner v. Culbertson*, *supra*:

* * * The intent to provide money, goods, labor, or skill sometime in the future cannot meet the demands of §§ 11 and 22 (a) of the Code that he who presently earns the income through his own labor and skill and the utilization of his own capital be taxed therefor. The vagaries of human experience preclude reliance upon even good faith intent as to future conduct as a basis for the present taxation of income.

Harkness, Sr. frankly admitted in his testimony that the conduct of the company's business was not altered in 1943 but remained essentially the same as in 1942 when he operated United Packing Co. as a sole proprietor. We conclude that he continued to dominate all phases of the company's life as before and the children acquiesced in such control of the business by their father. The evidence is decisive that the income of United Packing Co. for 1943 was earned by the efforts of Harkness, Sr. and

the capital contributed by both petitioners rather than from the services or capital contributions of the son and daughter.

Nor were Harkness, Jr. and Harriet Colgate entirely free to enjoy the fruits of their respective interests in the partnership at the close of 1943. In accordance with the partnership agreement Harkness, Sr. had first call on their shares of the company's net earnings for the year to offset the credit he had advanced to Harriet's capital account and to pay off the principal and interest on both their promissory notes which he held. Only after these obligations had been met were the children allowed to exercise control over their shares of the profits of United Packing Company.

On the basis of all the evidence we believe that the three Harknesses and Harriet Colgate had no present intent but rather an indefinite future plan to operate United Packing Co. as a genuine partnership when the partnership papers were drawn up and thus we conclude and found as a fact that the Harkness children were not *bond fide* partners in 1943 within the meaning of *Commissioner v. Culbertson*, *supra*. We therefore hold that one-half of United Packing Co.'s net income for 1943 should be taxed to each of the petitioners as owners of the business in community. Due to the fact the amount of the company's net income for 1943 determined by respondent is at variance with the amount stated in the stipulation of facts, the deficiencies in the

income tax liabilities of petitioners must *de* redetermined.

Decisions will be entered under Rule 50.

[Seal]

[Title of District Court and Cause.]

COMPUTATION FOR ENTRY OF DECISION

Comes now the Comimssioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and submits the attached computation of the deficiency under the opinion of The Tax Court of the United States promulgated December 22, 1949, in the above-entitled appeal.

The respondent's computation is submitted in accordance with Rule 50 of the Tax Court's Rules of Practice and is without prejudice to his right to contest the correctness of the decision pursuant to the statute in such cases made and provided.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel;

T. M. MATHER,
Special Attorney,
Bureau of Internal Revenue.

C:TS:PD

SF:TMM:BSF: Recomputation

Audit Statement
In re: Molly A. Harkness
3767 Huntington Boulevard
Fresno, California

Docket No. 16407

Deficiency letter, dated August 21, 1947

Income and Victory Tax

Year	Deficiency
1943	\$64,666.64

Recomputation of tax liability prepared in accordance with the memorandum opinion of The Tax Court of the United States promulgated December 22, 1949.

Molly A. Harkness

Recomputation Statement

Year: 1943

Schedule 1

Adjustments to Net Income

	Income Tax Net Income	Victory Tax Net Income
Net income as shown in deficiency notice.....	\$180,136.90	\$186,520.93
Net income, adjusted	180,011.90	186,395.93
Adjustment	\$ 125.00	\$ 125.00
Nontaxable income:		
Business income	\$ 125.00	\$ 125.00

Schedule 2

Explanation of Adjustment

The net profit of United Packing Company for the year 1943 is determined to be \$361,582.00 as shown in the stipulation of facts instead of \$361,832.00 as shown in the deficiency notice. Adjustment of this discrepancy results in a net decrease in profits of \$250.00, of which petitioner's community-half is \$125.00.

Schedule 3

Computation of Tax

Income tax net income, Schedule 1.....	\$180,011.90
Less: Personal exemption	1,100.00
Surtax net income	\$178,911.90
Less: Earned income credit	1,400.00
Balance subject to normal tax	\$177,511.90
Normal tax at 6% on \$177,511.90.....	\$ 10,650.71
Surtax on \$178,911.90.....	122,058.64
Income tax	\$132,709.35

Total income tax (brought forward)	\$132,709.35
Victory tax net income	\$186,395.93
Less: Specific exemption	624.00
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Income subject to victory tax	\$185,771.93
Victory tax at 5%	\$ 9,288.60
Less: Victory tax credit	500.00
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Net victory tax	8,788.60
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Income and victory tax	\$141,497.95
Income tax for 1942 as shown in deficiency notice, unchanged	\$ 37,095.33
Income and victory tax liability (greater amount)	\$141,497.95
Forgiveness feature:	
Income tax, 1942	\$ 37,095.33
Amount forgiven ($\frac{3}{4}$)	27,821.50
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Amount unforgiven	9,273.83
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Total income and victory tax	\$150,771.78
Income and victory tax shown on return (Original, Account No. 359238, First California District)	86,105.14
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Deficiency	\$ 64,666.64

Received and Filed T.C.U.S. January 17, 1950.

The Tax Court of the United States
Washington

Docket No. 16407

MOLLY A. HARKNESS,

Petitioner.

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court as set forth in its Findings of Fact and Opinion promulgated December 22, 1949, the respondent herein filed a recomputation of tax on January 17, 1950. At the hearing on respondent's recomputation of tax held February 15, 1950, the petitioner did not appear. No objection has been filed to respondent's recomputation. It appearing that such recomputation is correct, it is, therefore, in accordance therewith,

Ordered and Decided: That there is a deficiency in income and victory tax for the year 1943 in the amount of \$64,666.64.

Entered Feb. 15, 1950.

[Seal]: /s/ SAMUEL B. HILL,
 Judge.

Served Feb. 16, 1950.

[Title of Tax Court and Cause.]

PETITION OF MOLLY A. HARKNESS FOR
REVIEW BY THE UNITED STATES
COURT OF APPEALS FOR THE NINTH
CIRCUIT OF A DECISION BY THE TAX
COURT OF THE UNITED STATES

The taxpayer, Molly A. Harkness, petitioner in this cause, by Philip S. Ehrlich, R. J. Hecht and Albert A. Axelrod, counsel for petitioner, hereby files her petition for review by the United States Court of Appeals for the Ninth Circuit of the decision by the Tax Court of the United States promulgated December 22, 1949, 13 T. C. No. 129, determining deficiencies in income and victory taxes for the calendar year 1943, which deficiencies against the petitioner, Molly A. Harkness, was in the sum of \$64,666.64, which deficiencies were determined by the Tax Court on February 15, 1950; and said petitioner respectfully shows:

I.

The petitioner resides, and at all times mentioned in this petition has resided, in the City of Fresno, County of Fresno, State of California. She filed her separate income tax return for the calendar year 1943 with the Collector of Internal Revenue for the 1st District of California at San Francisco, California.

II.

Nature of the Controversy

The controversy involves the proper determina-

tion of the petitioner's liability for Federal Income and Victory Taxes for the calendar year 1943. The determination of the deficiency against the petitioner arose by reason of the inclusion by the respondent in the petitioner's taxable income for the taxable year 1943, on a community property basis, of all the income from the operation of a partnership composed of the petitioner, her husband, Floyd J. Harkness, the petitioner's son, Floyd J. Harkness, Jr., and the petitioner's daughter, Harriet Harkness Colgate. This partnership does business under the firm name and style of United Packing Co. During the taxable year in question, each of the persons above named owned a 25% interest in the partnership.

In connection with the controversy the Tax Court found, in part, as follows:

"Petitioners, Floyd J. Harkness and Molly A. Harkness, are individuals residing in Fresno, California. They filed their separate income tax returns for 1943 with the Collector of Internal Revenue for the First District of California. Petitioners were married July 14, 1915, and have made their home in California ever since. They have two children, Floyd J. Harkness, Jr., and Harriet Harkness Colgate, born in 1918 and 1920, respectively.

Harkness, Sr. has been a grower and shipper of fruits and vegetables since 1918. Prior to 1937 he engaged in this occupation first as an employee of various concerns and then as a member of two successive partnerships operating under the name of United Packing Co. In January 1937, petitioner

bought out his partner and commenced operating the business as a sole proprietorship under the same name. Molly Harkness, as his wife, owned the assets of the business in community with him. The company specialized in packing and shipping cantaloupes, carrots, peaches, plums, nectarines and grapes. Some commodities were raised by the company itself while others were bought from farmers on a cash basis. Still other produce was packed and shipped by the company on a commission basis. For the purposes of its business, United Packing Co. operated ranches and packing houses, and manufactured and stocked packing materials. Its main office was located in Fresno, but its operations covered a large area in the San Joaquin Valley extending northward 138 miles to Lodi and southward 127 miles to Arvin. At the close of 1942 the gross proceeds and net income earned by United Packing Co. amounted to \$1,468,119.64 and \$141,790.95, respectively.

During the years up to 1942 petitioners' two children were occupied primarily in obtaining an education, though each performed some service in their father's business. Harkness, Jr. attended schools until June, 1941 when he graduated from college with a major in commerce. From 1934 until 1941 he worked in his father's business during summer vacations and in 1937 he quit school for six months to help his father launch the sole proprietorship. From June, 1941 until January, 1942 he devoted his full time as an employee of United Packing Co. working as a 'regular field man' at a salary of

\$150 per month plus a five per cent bonus of approximately \$910. During this six-months' period he also earned four to five thousand dollars in independent deals in the fruit and vegetable business. On January 12, 1942, he entered the United States Air Corps as a private. At the close of 1942 petitioners' son still had a credit on the books of the sole proprietorship of \$1,412.05 for prior services performed. He owned no substantial property outside of these earnings at that time.

Harriet Harkness finished her schooling in June, 1942 when she graduated from college. During summer vacations she had occasionally performed secretarial services in her father's business. Harriet worked full time as a secretary at United Packing Co. from June until August, 1942 at which time she married William H. Colgate, Jr., who was then serving in the United States Army. Following her marriage she spent her time housekeeping for her husband at various military posts in the United States until October, 1944. She owned no significant amount of property at the time of her marriage.

Harriet's husband, William Colgate, had resided in Fresno County, California, all his youth and had been an acquaintance of the Harkness family for a number of years prior to his marriage in 1942. He attended college, majoring in commerce, and during summer vacations was employed by Peerless Pump Company, the largest supplier of irrigation pumps in the San Joaquin Valley. Colgate later quit school and worked full time for this company

for nine months before enlisting in the United States Army in March, 1941. This was in keeping with his desire to devote his career to agricultural pursuits in the Valley. As an assistant foreman aiding in the installation of extensive irrigation systems, Colgate acquired considerable knowledge of the mechanics of irrigation. After his marriage to Harriet, they were stationed at Columbus, Ohio, during the latter part of 1942 and throughout 1943.

In the fall of 1942 Harkness, Sr. became convinced that it would be advantageous to convert the operation of his fruit packing and shipping business from a sole proprietorship to a partnership composed of his wife, himself and his two children in the coming year. Many reasons dictated that decision. Primarily he desired to obtain the services of his son and son-in-law in the business. He felt that as a result of their college education and the practical experience they had gained pursuing agricultural employment in the Valley that they would make skilled, competent supervisors capable of overseeing the widespread operations of the company. Secondly, from his experience in the fruit and vegetable packing industry, Harkness believed that it was essential to increase the capital investment in the company by allowing annual profits to remain in the business. This was necessary not only to permit payment of extensive operating expenses, to allow for expansion of company facilities and equipment and to develop new business, but also to meet the exigencies of bad crop years when the com-

pany's income declined drastically. Furthermore, in 1942 fruit packers were anticipating a decline in profits due to labor shortages, low transportation priorities for their produce, and the probability that prices would tumble as in World War I. These circumstances only increased the need for increasing the capital reserve of United Packing Co. Yet it had been Harkness' experience in past years that to hold qualified supervisory personnel it was necessary to pay them large bonuses or percentages of profits which they invariably withdrew from the business and often used to set themselves up in competition with him, thus draining the company's capital. He felt the only way to retain profits in the company was to bring into the business persons who felt as he did. Through long discussions with Harkness, Jr. and William Colgate, petitioner knew that they agreed with him that only a reasonable amount of the profits should be withdrawn from United Packing Co. and the rest of the net income should be allowed to accumulate in the business.

While Harkness, Sr. was well aware that neither Floyd, Jr., nor William Colgate would be available to serve United Packing Co. for the duration of the war and he would be the only active partner in the meantime, yet he desired them to acquire an interest in the company at this time to guarantee their future help in running the business after their release from the Army.

Furthermore, formation of the partnership accorded with the wish of Harkness, Sr. to give his children an opportunity to make good. Even when

Floyd, Jr. was a boy he and his father planned for the day when the former would be a full-fledged partner. After graduation from college in 1941 Harkness, Jr. had pressed his father to give him the status of a partner in the business, and while Harkness, Sr. had too many financial commitments to do so in that year, yet he promised his son he would make provision for him to purchase an interest in the business. Now petitioner desired to fulfill that promise. It was long understood that if one child was given an opportunity to participate in the business, the other would be given an equal opportunity. Offering Harriet an opportunity to become a partner in his business not only fulfilled this pledge, but was a long step toward securing the eventual services of her husband which petitioner so greatly desired.

While Harkness, Sr. consulted a lawyer concerning the feasibility of converting his business into a partnership and was thus aware of the tax saving possibilities inherent therein, yet this fact was only a secondary consideration with him, and he would have entered into this arrangement regardless thereof.

During the fall of 1942 Harkness, Sr. held lengthy conversations with his son, who was stationed at a nearby airfield, regarding the proposed partnership. Harkness, Jr. eagerly accepted the chance to buy an interest in United Packing Co. for this had been his great desire for many years and assured him of full participation in the business on his re-

turn from the service. Petitioners and young Harkness then definitely planned to convert the business into a partnership starting in 1943.

Over the same period of time Harkness, Sr. also corresponded with his daughter and offered her either the opportunity to invest in United Packing Co. or some other enterprise. Furthermore, it was understood that if she decided to come into her father's business, her husband, William Colgate, would be allowed to participate in the partnership following his release from the Army. Harriet and William Colgate debated at length whether it was advisable for her to buy an interest in her father's business or invest elsewhere. Finally Harriet exercised her option to procure an interest in United Packing Co. after her husband determined he wanted to be associated with United Packing Co. upon his return from the service.

Thus by November, 1942 petitioners and both their children generally agreed to the formation of a partnership for the operation of United Packing Co. in the coming year, though the details of the partnership relationship had not been worked out. A "Certificate of Co-Partnership Transacting Business under Fictitious Name" was executed on November 12, 1942, which petitioners and young Harkness signed on that date and Harriet signed on November 28. It stated that the four were co-partners carrying on business under the name of United Packing Co. and that Harknes, Sr. was the general manager in full charge of all business operations. This certificate was published in a

local paper and later filed with the County Recorder of Fresno County.

On December 31, 1942, "Articles of Partnership," providing the detailed terms of the proposed partnership, were drafted and met the approval of all but Harriet Colgate, who refused to sign until provisions as to control of the business and as to purchase of a deceased partner's share were modified.

On January 1, 1943, petitioners transferred to United Packing Co., a partnership, most of the assets and some of the liabilities of United Packing Co., sole proprietorship, existing on December 31, 1942, resulting in a net worth of \$138,241.61 for the partnership on that date. Harkness, Jr. and Harriet Colgate each bought a one-fourth interest in the partnership for \$34,560.41, equivalent to one-fourth of its net worth. To pay Harkness, Sr. for his share in the partnership the son used \$1,392.05 of the credit he had earned as compensation for prior services rendered the sole proprietorship and on January 2, 1943, signed a promissory note for the remaining \$33,168.35 with interest at four per cent per annum. Harriet Colgate purchased her partnership interest from her father with a promissory note dated January 2, 1943, for \$34,560.40 plus four per cent interest per annum. William Colgate joined her on the note as co-maker. No collateral was required on either note.

These transactions were reflected on the books of United Packing Co., co-partnership, as of January 1, 1943. It showed assets of \$142,861.03 and

liabilities of \$4,619.92 and a net worth of \$138,241.61. Capital of the partnership was stated to be \$138,241.61 resulting from contributions of \$34,560.41 each from the three Harknesses and Harriet Colgate.

On January 4, 1943, pending acceptance by Harriet Colgate of the articles of partnership drafted on December 31, 1942, Harkness, Sr., Molly Harkness, Harkness, Jr. and Harriet Colgate signed a supplemental agreement fixing compensation and distribution of partnership profits among the partners. The salary of Harkness, Sr., as general manager of the partnership, was fixed at 75 per cent of the first \$100,000 of the partnership net income. There was no provision for salaries for the other partners. The remainder of the first \$100,000 of partnership net income was to be divided equally among the partners, as were any profits over that amount.

* * *

During January, 1943, Harkness, Sr. discussed with the Colgates the modifications sought by Harriet Colgate in the partnership agreement drafted on December 31, 1942. Harriet withdrew her objections when the original draft was altered to meet her demands. The reformed partnership agreement was signed by the three Harknesses on February 27, 1943, and by Harriet Colgate on March 10, 1943.

* * *

In February, 1943, an undivided one-half interest

in a 300-acre vineyard and orchard was acquired by Harkness, Sr., Molly Harkness, Harkness, Jr. and Harriet Colgate as tenants in common. The other half interest in the ranch was acquired by Chris Sorenson and his wife. Sorenson was a supervisory employee of United Packing Co. All funds for purchase of the vineyard were supplied by United Packing Co. and the amount loaned to Sorenson was repaid to the company by him. The 50 per cent interest acquired by the Harknesses and Harriet Colgate was included as an asset of United Packing Co. and subsequent income therefrom was included in its net income. Previously on January 16, 1943, by a bill of sale the personal property on the River Ranch had been conveyed to Chris A. Sorenson and Katharine Sorenson, his wife, and "Floyd J. Harkness, Molly A. Harkness, Harriet Harkness Colgate and Floyd J. Harkness, Jr., co-partners, doing business under the firm name and style of United Packing Co., a co-partnership." Prior to these purchases, all the partners were consulted with respect to them, and Harkness, Jr., who was familiar with the land, approved the transactions.

During the year 1943 there was no change in the operation of United Packing Co. over prior years. The business was still completely under the control of Harkness, Sr. Harriet and William Colgate were absent from Fresno until his discharge from the armed services in October 1944, so consequently she performed no services for United Packing Co. during the year 1943 nor did she participate in the

management of its affairs. Throughout the year 1943 until December, Harkness, Jr. was stationed at Hamilton Field, California, approximately six hours traveling time from Fresno, and frequently visited the company's office and packing plants on weekends. While he was unable to participate in the business activities, yet he discussed its problems with his father on these occasions. In December, 1943 Harkness, Jr. went overseas with the Air Corps and did not return to Fresno until January, 1946.

In 1943 United Packing Co. earned gross proceeds of \$2,572,905.53 and a net income of \$361,582. In accordance with the terms of the supplemental agreement Harkness, Sr. was paid a salary of \$75,000 and Harkness, Sr., Molly Harkness, Harkness, Jr. and Harriet Colgate each were credited with \$71,645.50 as their respective shares of the profits.

Harriet's credit on the partnership books was first applied to pay off the principal and interest on her promissory note to Harkness, Sr., in the amount of \$35,942.82, and to offset prior withdrawals from her capital account consisting of cash in the amount of \$112.97 and sums of \$1,070.89 and \$31,423.67 paid to the Collector of Internal Revenue. The balance of \$3,095.15 which she left in the business at the close of 1943 was withdrawn in 1944 to pay for taxes and personal expenditures. Of the \$71,645.50 credited to Harkness, Jr., \$34,495.08 was turned over to his father to pay the principal and interest on his promissory note. Of the remaining \$37,150.42 which he left in the business in 1943, young

Harkness expended \$331.58 for his own use in 1944.

United Packing Co. filed a partnership return for the year 1943, reporting a net income of \$361,-582, compensation of \$75,000 paid to Harkness, Sr., and the distribution of \$71,645.50 from profits to each of the three Harknesses and to Harriet Colgate.

Harkness, Sr. and Molly Harkness filed separate income tax returns in 1943. As residents of a community property state, each reported one-half of the total income of \$218,291 they together received from United Packing Co. in 1943, or \$109,145.50.

In his notices of deficiency sent to petitioners, respondent determined that the net income of United Packing Co. for 1943 was \$361,823 and that each petitioner realized one-half of this amount, or \$180,-916, as community property income. The notice of deficiency sent to Harkness, Sr. stated in part:

“(a) On December 31, 1942, you and your wife, Molly A. Harkness, together with your two children, Floyd James Harkness, Jr. and Harriet Harkness Colgate, executed an instrument purporting to create a family partnership. Since Floyd James Harkness, Jr. and Harriet Harkness Colgate contributed no capital originating with themselves, rendered no services to the business, and were not required to participate in the control and management of the business under the terms of the alleged partnership agreement, it is held that they did not acquire valid partnership interests in the United Packing Company. Accordingly, profits

from the above-named organization are reallocated to you and your wife on a community property basis, thus increasing your taxable income by \$71,770.50 as shown below.

Total net profit of United Packing

Company	\$361,832.00
Your community one-half share	180,916.00
Amount reported on return	109,145.50

Adjustment—Increase\$ 71,770.50''

Similar language was contained in the notice of deficiency received by Molly Harkness.

The three Harknesses and Harriet Colgate had no intent to join together in conducting the business of United Packing Company as bona fide partners in 1943 and thus their partnership was not valid for tax purposes in that year."

The Tax Court, in its opinion, held that the petitioner, her husband, and their children had no intent to join together in conducting the business of United Packing Co. as bona fide partners in 1943, and that their partnership was not valid for tax purposes in that year.

III.

The said taxpayer, to wit, Molly A. Harkness, being aggrieved by the Findings of Fact and Conclusions of Law contained in said Findings and Opinions of the Court and by the Tax Court's decisions entered pursuant thereto, desires to obtain a review thereof by the United States Court of Appeals for the Ninth Circuit.

IV.

The petitioner assigns as error the following acts and omissions of the Tax Court of the United States:

1. The Tax Court erred in finding contrary to the record that:

“During the year 1943 there was no change in the operation of United Packing Co. over prior years. The business was still completely under the control of Harkness, Sr.”

2. The Tax Court erred in finding contrary to the record that no collateral was required to secure the notes given by Harriet Colgate and Floyd J. Harkness, Jr. to petitioner and her husband.

3. The Tax Court erred in finding contrary to the record as a whole that:

“The three Harknesses and Harriet Colgate had no intention to join together in conducting the business of United Packing Co. as bona fide partners in 1943 and thus their partnership was not valid for tax purposes in that year.”

4. The Tax Court erred in not finding, as the record shows, that Floyd J. Harkness, Jr., upon his return from the Army in January, 1946, was appointed Assistant General Manager of the partnership business, and has ever since that time, and up to January 11, 1949, the date of the hearing of this case, rendered substantial managerial services to the business.

5. The Tax Court erred in not finding, as the record shows, that during the year 1946 Floyd J. Harkness, Jr. received the sum of \$57,984.85, and during the year 1947 the sum of \$53,635.13, as salary for each of said years for services rendered as such Assistant General Manager.

6. The Tax Court erred in not finding, as the record shows, that during the period 1946 to 1947, Floyd J. Harkness, Jr. withdrew from the partnership business a total sum of \$121,484.51.

7. The Tax Court erred in not finding, as the record shows, that William Colgate was discharged from the Army in the Fall of 1944, and immediately went to work for the partnership, and in not finding that in January, 1945, William Colgate became a fifth partner in the enterprise.

8. The Tax Court erred in not finding, as the record shows, that William Colgate has ever since January, 1945, been the Manager of the Clovis-Sanger District of the partnership and has rendered substantial services of a supervisory and managerial nature to the partnership, and in not finding that he has received the following compensation for his services: 1944, \$450.00; 1945, \$5,275.00; 1946, \$46,554.79; 1947, \$35,928.45.

9. The Tax Court erred in not finding, as the record shows, that during the period 1944 to 1947, William Colgate and Harriet Colgate have withdrawn \$100,138.48 from the partnership.

10. The Tax Court erred in not finding, as the record shows, as a whole, that Floyd J. Harkness, Jr., and Harriet Colgate were and have been ever since January 1, 1943, the true owners of an undivided interest in the assets of the partnership.

11. The Tax Court erred in not finding, as the record shows as a whole, that Floyd J. Harkness, Jr. and William Colgate made, as of the date of the formation of the partnership, a commitment to render services to the partnership as soon as circumstances permitted.

12. The Tax Court erred in not finding, as the record shows, that Floyd J. Harkness, Jr., Harriet Colgate and petitioner and her husband were co-owners, as tenants in common, of one-half of the Ranch known as the "River Ranch," each owning an undivided $\frac{1}{8}$ th interest therein, and in not finding that during the year 1943 the profits derived from the operation of this Ranch amounted to \$60,309.92, and in not finding that the $\frac{1}{8}$ th interest of each of the children yielded an income belonging to them in the sum of \$15,077.48 each.

13. The Tax Court erred in not finding, as the record shows, that Harriet Colgate and Floyd J. Harkness, Jr. pledged the first income to be derived from the business of the partnership to the payment of the notes given by them to petitioner and her husband.

14. The Tax Court erred in not finding, as the record shows, that petitioner and her husband and

Harriet Colgate and Floyd J. Harkness, Jr. intended to join together in conducting the business of United Packing Co. as bona fide partners in 1943 and that their partnership was valid for tax purposes for that year.

15. The Tax Court erred in that its decision herein is contrary to the applicable decisions of the Supreme Court of the United States.

16. The Tax Court erred herein in that its decision is contrary to the applicable decisions of the Tax Court heretofore made.

17. The Tax Court erred in finding, contrary to the record, a deficiency for the year 1943, in lieu of a finding that there is no income tax due from the petitioner for said year.

Wherefore, petitioner prays for a review by the United States Court of Appeals for the Ninth Circuit of the decision by the United States Tax Court, promulgated December 22, 1949, 13 T.C. No. 129; and that upon such review said Honorable Court make and enter a decree setting aside and reversing said decision of the United States Tax Court, and determine that the respondent, the Commissioner of Internal Revenue, erred in reallocating the income of the partnership known as United Packing Co. and in such reallocation reallocating to the petitioner, namely, Molly A. Harkness, and to her husband, Floyd J. Harkness, Sr., on a community basis, the entire income from said partnership; and should further determine that there was no de-

iciency in income taxes or victory taxes for the year 1943 from said petitioner.

/s/ PHILIP S. EHRLICH,

/s/ ALBERT A. AXELROD,

/s/ R. J. HECHT,

Counsel for Petitioner.

State of California,

City and County of San Francisco—ss.

Albert A. Axelrod and R. J. Hecht, being first duly sworn, depose and say:

That they are counsel of record in the above-entitled cause; that as such counsel they are authorized to verify the foregoing petition for review, that they have read said petition and are familiar with the statements contained therein; that the statements made are true to the best of each of their knowledge, information and belief.

/s/ ALBERT A. AXELROD,

/s/ R. J. HECHT.

Subscribed and sworn to before me this 10th day of May 1950.

[Seal] /s/ GLADYS C. OKERSTROM,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires October 27, 1952.

Received and Filed May 12, 1950.

In the United States Court of Appeals
For the Ninth Circuit

Docket No. 16407

MOLLY A. HARKNESS,

Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

NOTICE OF FILING PETITION
FOR REVIEW

To: Charles Oliphant,
Chief Counsel,
Bureau of Internal Revenue.

You are hereby notified that the above-petitioner did, on the 12th day of May, 1950, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit, of the decision of this Court heretofore rendered in the above-entitled case. Copy of the petition for review as filed is hereto attached and served upon you.

Dated this 16th day of May, 1950.

/s/ VICTOR S. MERSCH,

Clerk, The Tax Court of the
United States.

Service of Copy of Petition for Review Acknowledged this 16th day of May, 1950.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent.

Filed T.C.U.D. May 16, 1950.

In the Tax Court of the United States

No. 16,407

MOLLY A. HARKNESS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PRAECIPE FOR RECORD

To the Clerk of the Tax Court of the United States:

You are hereby respectfully requested to prepare and certify and transmit to the Clerk of the United States Court of Appeals for the Ninth Circuit, with reference to Petition for Review heretofore filed by the petitioner in the above-entitled cause, a transcript of record in the above cause prepared and transmitted as required by law and by the rules of said court, and to include in said transcript of record the following documents or certified copies thereof, to wit:

1. The docket entries of all proceedings before the Tax Court.

2. Pleadings before the Tax Court of the United States as follows:

(a) Petition for redetermination.

(b) Answer of respondent.

3. Stipulation of facts filed at the hearing January 11, 1949.

4. Reporter's transcript of the proceedings and testimony before the Tax Court on January 11, 1949.

5. The following exhibits introduced in evidence before the Tax Court on January 11, 1949:

(a) Joint exhibits: 10-J, 11-K, 12-L.

(b) Petitioner's exhibits: 13, 14, 15, 16, 17, 18.

(c) Respondent's exhibits M, N.

6. Notice under Rule 50.

7. Respondent's computation for entry of decision.

8. Stipulation signed by counsel for petitioner with respect to the computation of respondent. [No record hereof located Victor S. Mersch.]

9. Decision of the Tax Court.

10. Petition for Review filed by petitioner.

11. This praecipe.

12. Notice of Filing Petition for Review.

Dated: July 10, 1950.

/s/ PHILIP S. EHRLICH,

/s/ ALBERT A. AXELROD,

/s/ R. J. HECHT,

Attorneys for Petitioner,

Molly A. Harkness.

Affidavit of Service by Mail attached.

Received and Filed, T.C.U.S., July 12, 1950.

[Title of Tax Court and Cause.]

CERTIFICATE

I, Victor S. Mersch, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 15, inclusive, constitute and are all of the original papers and proceedings on file in my office as called for by the "Praeceptum for Record" in the proceeding before the Tax Court of the United States entitled: "Molly A. Harkness, Petitioner, v. Commissioner of Internal Revenue, Respondent," Docket No. 16407, and in which the petitioner in the Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United

States, at Washington, in the District of Columbia,
this 14th day of July, 1950.

[Seal] /s/ VICTOR S. MERSCH,
Clerk.

[Endorsed]: No. 12618. United States Circuit
Court of Appeals for the Ninth Circuit. Molly A.
Harkness, Petitioner, vs. Commissioner of Internal
Revenue, Respondent. Transcript of the Record
upon Petition to Review a Desision of the Tax
Court of the United States.

Filed: July 19, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Ap-
peals for the Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit

No. 12618

MOLLY A. HARKNESS,

Petitioner and Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent and Appellee.

APPLICATION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE RECORD AND
DOCKET CASE ON A PETITION FOR
REVIEW FROM A DECISION OF THE
TAX COURT OF THE UNITED STATES

To the Honorable Justices of the United States
Court of Appeals for the Ninth Circuit:

The above-named petitioner, Molly A. Harkness, through her counsel, hereby applies to this Honorable Court for an extension of time within which to file the record and docket her case after filing of the petition for review in the Tax Court of the United States.

This application is made on the ground of excusable neglect of one of counsel for said petitioner, in failing to file with the Clerk of the Tax Court of the United States a praecipe designating the record to be transmitted to the Clerk of this Honorable Court, within the forty-day period called for by Rule 31 of this Honorable Court.

This application is supported by the affidavit of R. J. Hecht, one of counsel for petitioner, and points and authorities likewise attached to this application.

Petitioner respectfully requests that she be granted a reasonable time within the discretion of the above-entitled court within which the Clerk of the Tax Court may file with the Clerk of this Honorable Court said record, and within which said case may be docketed.

Dated: July 7, 1950.

/s/ PHILIP S. EHRLICH,

/s/ ALBERT A. AXELROD,

/s/ R. J. HECHT,

Attorneys for Petitioner and Appellant Molly A.
Harkness.

Ordered time of petitioner to file transcript of record and docket cause extended to August 1, 1950.

/s/ WILLIAM HEALEY,

/s/ WM. E. ORR,

/s/ WALTER L. POPE,

U. S. Circuit Judges.

[Endorsed]: Filed July 8, 1950.

[Title of Tax Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF PARTS OF THE RECORD NECESSARY FOR CONSIDERATION THEREOF

Appellant proposes, on her appeal, to rely on the following points:

1. The following ultimate finding of the Tax Court is contrary to its evidentiary findings:

“The three Harknesses and Harriet Colgate had no intent to join together in conducting the business of United Packing Co. as bona fide partners in 1943 and thus their partnership was not valid for tax purposes in that year.”

2. The ultimate finding set forth in 1 above is based upon a misapplication of the law.

3. The ultimate finding set forth in 1 above is clearly erroneous because it is against the clear weight of the evidence and is arrived at by accepting part of the evidence and totally disregarding other convincing evidence.

4. The following finding of fact is clearly erroneous because it is against the clear weight of the evidence and is arrived at by accepting part of the evidence and totally disregarding other convincing evidence:

“During the year 1943 there was no change in the operation of the United Packing Co.

over prior years. The business was still completely under the control of Harkness, Sr.”

5. The following ultimate finding of the Tax Court is contrary to its evidentiary findings:

“No collateral was required on either note.”

6. The ultimate finding set forth in 5 above is clearly erroneous because it is against the clear weight of the evidence.

7. The Tax Court erred in not finding, as the record shows, that Floyd J. Harkness, Jr., upon his return from the Army in January, 1946, was appointed Assistant General Manager of the partnership business, and has ever since that time, and up to January 11, 1949, the date of the hearing of this case, rendered substantial managerial services to the business.

8. The Tax Court erred in not finding, as the record shows, that during the year 1946 Floyd J. Harkness, Jr., received the sum of \$57,984.85, and during the year 1947 the sum of \$53,635.13, as salary for each of said years for services rendered as such Assistant General Manager.

9. The Tax Court erred in not finding, as the record shows, that during the period 1946 to 1947 Floyd J. Harkness, Jr., withdrew from the partnership business a total sum of \$121,484.51.

10. The Tax Court erred in not finding, as the record shows, that William Colgate was discharged from the Army in the Fall of 1944, and immedi-

ately went to work for the partnership, and in not finding that in January, 1945, William Colgate became a fifth partner in the enterprise.

11. The Tax Court erred in not finding, as the record shows, that William Colgate has ever since January, 1945, been the Manager of the Clovis-Sanger District of the partnership and has rendered substantial services of a supervisory and managerial nature to the partnership, and in not finding that he has received the following compensation for his services: 1944, \$450.00; 1945, \$5,275.00; 1946, \$46,554.79; 1947, \$35,928.45.

12. The Tax Court erred in not finding, as the record shows, that during the period 1944 to 1947 William Colgate and Harriet Colgate have withdrawn \$100,138.48 from the partnership.

13. The Tax Court erred in not finding, as the record shows, as a whole, that Floyd J. Harkness, Jr., and Harriet Colgate were and have been ever since January 1, 1943, the true owners of an undivided interest in the assets of the partnership.

14. The Tax Court erred in not finding, as the record shows as a whole, that Floyd J. Harkness, Jr., and William Colgate made, as of the date of the formation of the partnership, a commitment to render services to the partnership as soon as circumstances permitted.

15. The Tax Court erred in not finding, as the record shows, that Floyd J. Harkness, Jr., Harriet Colgate and appellant and her husband, Floyd J.

Harkness, Sr., were co-owners, as tenants in common, of one-half of the Ranch known as the "River Ranch," each owning an undivided 1/8th interest therein, and in not finding that during the year 1943 the profits derived from the operation of this Ranch amounted to \$60,309.92, and in not finding that the 1/8th interest of each of the children yielded an income belonging to them in the sum of \$15,077.48 each.

16. The Tax Court erred in not finding, as the record shows, that Harriet Colgate and Floyd J. Harkness, Jr., pledged the first income to be derived from the business of the partnership to the payment of the notes given by them to appellant and her husband.

17. The Tax Court erred in not finding, as the record shows, that appellant and her husband and Harriet Colgate and Floyd J. Harkness, Jr., intended to join together in conducting the business of United Packing Co. as bona fide partners in 1945 and that their partnership was valid for tax purposes for that year.

18. The Tax Court erred in that its decision herein is contrary to the applicable decisions of the Supreme Court of the United States. (Commissioner of Internal Revenue v. Culbertson, 337 U. S. 733; Commissioner of Internal Revenue v. Tower, 327 U. S. 280.)

19. The Tax Court erred herein in that its decision is contrary to the applicable decisions of the

Tax Court heretofore made. (Issac Blumberg, 11 T. C. 663.)

20. The Tax Court erred in finding, contrary to the record, a deficiency for the year 1943, in lieu of a finding that there is no income tax due from appellant for said year.

Appellant designates the following portions of the record as necessary for the consideration of the foregoing points:

- (a) The petition of Molly A. Harkness.
- (b) Answer of Commissioner of Internal Revenue.
- (c) Stipulation of facts and Exhibits 1-A through 9-I, attached.
- (d) Official report of proceedings before the Tax Court.
- (e) The following joint exhibits attached to the petition: 10-J, 11-K and 12-L.
- (f) Exhibits 13, 14, 15, 16, 17, 18, and M and N.
- (g) Findings of fact and opinion of the Tax Court.
- (h) Respondent Commissioner's computation for entry of decision.
- (i) Decision.
- (j) Petition for review.
- (k) Proof of service of petition for review.
- (l) Application and order re extension of time to transmit record. (Please omit affidavit in support of application and points and authorities.)
- (m) Praecipe for record.

(n) Certificate of Clerk of Tax Court of the United States.

(o) This statement of points on which appellant intends to rely and designation of parts of the record necessary for consideration thereof.

Dated at San Francisco, California, July 24, 1950.

/s/ PHILIP S. EHRLICH,

/s/ ALBERT A. AXELROD,

/s/ R. J. HECHT,

Attorneys for Appellant
Molly A. Harkness.

[Endorsed]: Filed July 25, 1950.

[Title of Tax Court and Cause.]

STIPULATION FOR CONSOLIDATION ON PETITION FOR REVIEW

It Is Hereby Stipulated by and between the parties, through their respective counsel, that the above-entitled cause be consolidated with the case of Floyd J. Harkness, Petitioner, vs. Commissioner of Internal Revenue, Respondent, No. 12619, and that for the purposes of said consolidated petitions the parties will rely upon the record in the above-entitled cause.

It Is Likewise Stipulated by and between the parties, through their respective counsel, that the petitions for review in this cause, and in the cause of Floyd J. Harkness, Petitioner, vs. Commissioner

of Internal Revenue, Respondent, No. 12619, be consolidated for the purposes of brief, argument and opinion.

Dated: August 11, 1950.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

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Charles Oliphant,
Attorneys for Respondent.

/s/ PHILIP S. EHRLICH,

/s/ ALBERT A. AXELROD,

/s/ R. J. HECHT,
Attorneys for Petitioner.

It Is Ordered: That the above causes be consolidated for purposes of brief and argument.

/s/ WILLIAM DENMAN,
Judge of the United States
Court of Appeals.

/s/ CLIFTON MATHEWS,

/s/ WILLIAM HEALY,
Judges, U. S. Court of
Appeals for the 9th Circuit.

[Endorsed]: Filed August 17, 1950.

